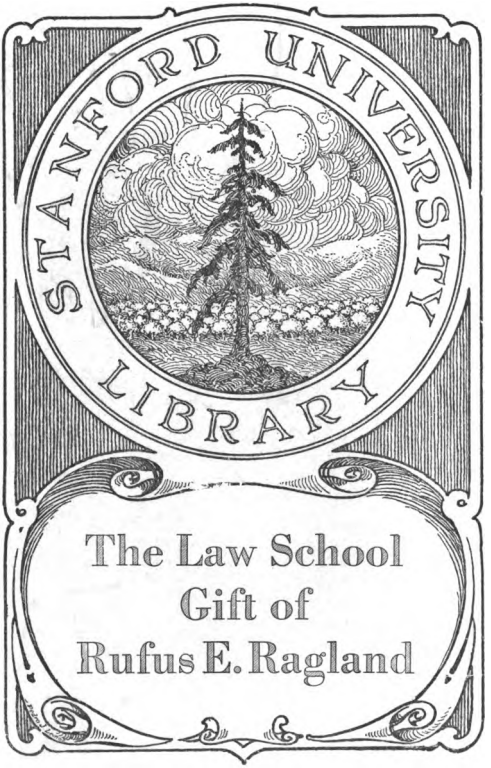

Utah Collection

LAWS,

MEMORIALS, AND RESOLUTIONS

OF THE

TERRITORY OF UTAH,

PASSED AT THE

Twenty-third Session,

OF THE

LEGISLATIVE ASSEMBLY,

HELD AT THE CITY OF SALT LAKE, THE CAPITAL OF SAID TERRITORY,
COMMENCING JANUARY 14TH, A. D. 1878, AND ENDING
FEBRUARY 22ND, A. D. 1878.

PUBLISHED BY AUTHORITY.

SALT LAKE CITY:
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1878.

CERTIFICATE OF AUTHENTICATION.

TERRITORY OF UTAH,
SECRETARY'S OFFICE, } ss.

I, LEVI P. LUCKEY, Secretary of the Territory of Utah, do hereby certify that the printed laws, joint memorials, and joint resolutions contained in this volume are true, correct, and full copies of all the enrolled laws, joint memorials, and joint resolutions that were passed at the twenty-third regular session of the Legislative Assembly of said Territory, begun and held at the city of Salt Lake, the capital of said Territory, on the 14th day of January, A. D. 1878, and ending on the 22d day of February, A. D. 1878, with the exceptions of corrections in orthography and punctuation, and omissions inserted in brackets.

In Testimony Whereof, I have hereunto set my hand and affixed the great seal of said Territory. Done at the city of Salt Lake, the capital of said Territory of Utah, this 6th day of May, A. D. 1878.

[L. S.]

LEVI P. LUCKEY, *Secretary.*

FEDERAL OFFICERS OF THE TERRITORY.

GOVERNOR:

GEORGE W. EMERY.

SECRETARY:

LEVI P. LUCKEY.

JUDGES OF THE SUPREME COURT:

Chief Justice:

MICHAEL SCHAEFFER, ... *Third District.*

Associate Justices:

PHILIP H. EMERSON, ... *First District.*

JACOB S. BOREMAN, ... *Second District.*

UNITED STATES MARSHAL:

M. SHAUGHNESSY.

UNITED STATES ATTORNEY:

PHILIP T. VAN ZILE.

SURVEYOR GENERAL:

FRED'K SALOMON.

RECEIVER OF PUBLIC MONEYS:

MOSES M. BANE.

REGISTER OF LAND OFFICE:

BARBOUR LEWIS.

UNITED STATES COLLECTOR:

O. J. HOLLISTER.

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ACTS AND RESOLUTIONS

OF THE

TERRITORY OF UTAH,

PASSED AT THE

TWENTY-THIRD SESSION OF THE LEGISLATIVE ASSEMBLY,

1878.

CHAPTER I.

OF DIVORCE.

AN ACT amending Sections 1151 and 1154 of the Compiled Laws of Utah.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah*:—That Section 1151 of the Compiled Laws of Utah Territory is hereby repealed, and the following substituted therefor: (1151) Proceedings in Divorce shall be commenced and conducted in the manner provided by law for proceedings in civil cases, except as hereinafter provided, and the Court may decree a dissolution of the marriage contract between the plaintiff and defendant, in all cases wherein the plaintiff, for one year next prior to the commencement of the proceedings, shall have been an actual and *bona fide* resident of the County within the jurisdiction of the Court, for any of the following causes, to-wit: first,

Section 1151 repealed.

Grounds of Divorce.

Plaintiff must have been resident for one year.

Grounds on which Decrees of Divorce may issue.

impotency of the defendant at the time of marriage; second, adultery committed by defendant subsequent to marriage; third, willful desertion of plaintiff by defendant for more than one year; fourth, willful neglect of defendant to provide for his wife the common necessaries of life; fifth, habitual drunkenness of defendant; sixth, conviction of defendant for felony; seventh, cruel treatment of plaintiff by the defendant to the extent of causing great bodily injury or great mental distress to plaintiff.

Section 1154 repealed.

Complaint to be verified by oath of Plaintiff.

No decree upon default except upon testimony taken.

Referees shall report testimony in full.

Court shall file its findings on decrees with the testimony.

SEC. 2.—That Section 1154 of said Compiled Laws of Utah is hereby repealed, and the following substituted therefor: (1154) The complaint or petition shall be in writing, and verified by the oath of the plaintiff, and no decree in divorce shall be granted by any Court upon default, or otherwise, except upon legal testimony taken in the cause, and in case a reference is ordered, the referees shall report in writing the testimony in full, and the Court, in all cases in divorce, shall make and file its findings and decrees upon the testimony.

Approved February 2, 1878.

CHAPTER II.

OF RECORD BOOKS, ETC.

AN ACT Providing for the Purchase of Record Books and Safes for the District Courts.

Auditor to purchase record books and safes for District Courts.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:—That the Auditor of Public Accounts is hereby authorized and empowered to purchase for the use of the District Courts all necessary record books and one safe each for the First and Second Districts and two for the Third District. The Auditor of Public Accounts is further authorized and empowered to draw the sum of three thousand dollars, appropriated February twentieth, eighteen hundred and seventy-four, for

the purpose of purchasing safes, or so much thereof as may be necessary to purchase and deliver the books and safes herein specified.

Approved February 18, 1878.

CHAPTER III.

OF SELECTMEN.

AN ACT supplementary to An Act entitled An Act creating the Office of Selectmen and Prescribing their duties, also the duties of County Courts.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That each County in this Territory is hereby declared to be a body politic and corporate, and the County Courts shall have all the powers and perform all the the duties heretofore conferred upon them by An Act of which this is supplementary.

Each County a body politic and corporate.

County Courts, Powers of.

SEC. 2.—The name of each County as designated in "An Act defining the boundaries of Counties and locating County Seats, approved January tenth, one thousand, eight hundred and sixty-six," shall be its corporate name, and it must be known and designated thereby in all actions and proceedings touching its rights, property and duties.

Name of County shall be its corporate name.

SEC. 3.—It shall have power: 1—To sue and and be sued, plead and be impleaded; 2—To make contracts and to purchase and hold such real and personal property as may be necessary for the exercise of its powers; 3—To direct the use or disposition of its property, as the interests of its inhabitants require; 4—To levy and collect such taxes, for purposes under its exclusive jurisdiction, as are authorized by the laws of this Territory.

County shall have power.

SEC. 4.—No County shall loan money, nor in any manner loan or give its credit to or in aid of any person, company or corporation, unless it is expressly authorized so to do by law.

County shall not loan money or give credit unless expressly authorized.

No county shall borrow money or incur indebtedness exceeding

SEC. 5.—No County shall be allowed to borrow money, or voluntarily incur any indebtedness requiring the issuing of warrants or orders upon its treasury exceeding the amount of unpaid taxes of the current fiscal year and the amount of money in its treasury; and such borrowed money must always be made payable within one year from the time of making the loan.

Actions shall not be commenced against County until

SEC. 6.—No actions shall be commenced or maintained against any County, until the person or party having a claim, demand, or right of action, shall present the same to the County Court thereof, with proof of the correctness of such claim, demand or right; and until the same shall have been disallowed by said Court.

Claim not audited in 4 months after presentation deemed disallowed.

SEC. 7.—If any claim or demand against any County be presented to the County Court of such County for allowance, and the Court shall neglect or fail to audit the same within four months from the time the claim is presented, the claim or demand shall be deemed disallowed.

Acceptance of part of claim deemed waiver of rest.

SEC. 8.—Whenever any claim or demand against any County shall be allowed in part and disallowed in part, the acceptance of the part allowed, without a protest, shall be deemed a waiver of the part disallowed. If the claimant file his protest against the disallowance, he may, within one year and not afterward, bring suit for the part disallowed.

Judgment against County.

No execution shall issue under.

SEC. 9.—Whenever any judgment shall be rendered against any County by a court of competent jurisdiction, no execution shall be issued thereon, but the party in whose favor the judgment is entered may obtain a duly certified transcript thereof, and file the same with the Clerk of the County Court, who shall enter the same in the County Court records; and unless the County Court shall, within three months threafter, take an appeal from said judgment, the claim must be paid as other allowed demands against the County.

Final, unless County appeals within 3 months.

Demands against County to be paid in order of presentation.

SEC. 10.—All allowed demands against any County in this Territory must be paid out of the County Treasury in the order of their presentation.

Approved February 18, 1878.

CHAPTER IV.

AMENDING THE COMPILED LAWS.

AN ACT amending certain Sections of the Compiled Laws of Utah and extending the Jurisdiction of Justices of the Peace.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah :*—That Section 1847, of the Compiled Laws of Utah, be amended to read: Except in cases where a different punishment is prescribed by this Code, every offense declared to be a misdemeanor is punishable by imprisonment in a County jail not exceeding six months; or by a fine in any sum less than three hundred dollars, or by both; and that the fourth subdivision in Section 1876, be amended to read as follows: (1876) Fourth.—If such prisoner was in custody otherwise than upon a charge or conviction of felony, by a fine in any sum less than three hundred dollars, or imprisonment in the County jail not exceeding six months, or by both; and that Section 1907 be amended to read as follows: (1907) Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the County jail not exceeding six months, or by a fine in any sum less than three hundred dollars, or by both; and that Section 1949 be amended to read as follows: (1949) An assault is punishable by a fine in any sum less than three hundred dollars, or by imprisonment in the County jail not exceeding three months; and that Section 1951 be amended to read as follows: (1951) A battery is punishable by a fine in any sum less than three hundred dollars, or by imprisonment in the County jail not exceeding six months, or by both; and that section 1989 be amended to read as follows: (1989) Every person who causes, procures or employs any female to play for hire, drink or gain upon any musical instrument, in any drinking saloon, dance room, or dance-cellar, public garden, or any public highway, common or street, or on a vessel, steamboat or railroad car, or in any lewd house, or disorderly place whatsoever where two or more persons are

Section 1847 amended.

Misdemeanor, how punished.

Section 1876 amended.

Felony, how punished.

Section 1907 amended.

Common barratry, how punished.

Section 1949 amended.

Assault, how punished.

Section 1951 amended.

Battery, how punished.

Section 1989 amended.

Wrongful employment of females, how punished.

assembled together, is punishable by fine in any sum less than three hundred dollars, or by imprisonment in the County jail not exceeding three months, or by both; and any female so playing upon any musical instrument whatsoever, is punishable by fine not exceeding one hundred dollars, or by imprisonment in the County jail not exceeding one month, or by both; and that Section 1990 be amended to read as follows: (1990) Every person who causes, or procures, or employs any female to dance, promenade, or otherwise exhibit herself for hire, drink, or gain in any drinking saloon, dance-cellar, or dance-room, public garden, public highway, or in any place whatsoever, (theatres excepted) where two or more persons are assembled together, is punishable by a fine in any sum less than three hundred dollars, or by imprisonment in the County jail not exceeding three months, or by both; and every female so dancing, promenading, or exhibiting herself, is punishable by a fine not exceeding one hundred dollars, or by imprisonment in the County jail not exceeding one month, or by both; and that Section 2110 be amended to read as follows: (2110) Petit larceny is punishable by a fine in any sum less than three hundred dollars, or by imprisonment in the County jail not exceeding six months, or both; and that Section 2180 be amended to read as follows: (2180) Every person who willfully and maliciously, burns, injures or destroys any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cuts loose, or sets adrift any such raft, or any part thereof, or cuts, breaks, injures, sinks, or sets adrift any vessel, boat, or skiff, the property of another, is punishable by a fine in any sum less than three hundred dollars, or by imprisonment in the County jail not exceeding six months; and that Section 2301 be amended to read as follows: (2301) Magistrates have jurisdiction to hear, try and determine all public offences arising in their respective Counties, wherein the punishment prescribed by law does not exceed six months' imprisonment in a County jail, or a fine in any sum less than three hundred dollars, or by both. This Act shall take effect from and after its passage.

Approved February 18, 1878.

Section 1990 amended.

Employment of female to exhibit herself, how punished.

Section 2110 amended.

Petit larceny, how punished.

Section 2180 amended.

Mallicious injury or destruction of lumber and injury or setting adrift of boats or vessels, how punished.

Section 2301 amended.

Magistrates' jurisdiction enlarged to inflicting fine of three hundred dollars and imprisonment for six months.

CHAPTER V.

OF COUNTY BOUNDARY LINES.

AN ACT defining the manner of determining Disputed County Boundary Lines.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah*:—That the Territorial Surveyor General is hereby appointed a Territorial Commissioner, with power and authority to determine disputed County boundary lines in this Territory in the manner hereafter provided.

Territorial Surveyor General authority to determine disputed County boundary lines.

SEC. 2.—Whenever any dispute or uncertainty shall arise as to any County boundary, the same may be determined by the County Surveyors of the Counties interested, and in case they fail to agree, or otherwise fail to establish the boundary, the County Courts of either or both Counties interested, may engage the services of the aforesaid Territorial Commissioner, who, with the said County Surveyors, or either of them, if but one appear for that purpose, shall proceed forthwith to permanently determine such boundary line at the expense of the Counties interested by making the necessary surveys and erecting suitable monuments to designate said boundaries, which shall be deemed permanent until superseded by legislative enactment. Nothing in this Act shall be construed to give the Surveyors, mentioned herein, any further authority than to erect suitable monuments to designate said boundaries as they are now established by law.

Disputes concerning County boundary lines, how settled.

Surveyor can only erect suitable monuments to designate boundaries.

Approved February 20, 1878.

CHAPTER VI.

OF MINING DISTRICTS.

AN ACT to amend An Act entitled, "An Act in relation to proving the Records and Mining Rules and Regulations of the Mining Districts of this Territory, and for other purposes."

Mining Act of Feb'y 18, 1876, amended.

Recorder of Mining District

When office is vacant or Recorder disqualified records shall be deposited with County Recorder.

County Recorder shall act in place of District Recorder.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That the Act entitled, "An Act in relation to proving the Records and Mining Rules and Regulations of the Mining Districts of this Territory, and for other purposes," approved February 18, 1876, is hereby amended by adding thereto another Section, to be known as Section 5, as follows: Section 5.—Whenever there is a vacancy in the office of Recorder of any Mining District, or the person holding such office shall remove from the District leaving therein no qualified successor in office; or whenever from any cause there is no person in such District authorized to retain the custody and give certified copies, of the records, it shall be the duty of the person having custody of the records to deposit the same in the office of the County Recorder of the County in which such Mining District, or the greater part thereof, is situated, and the County Recorder shall receive such records, and is hereby authorized to make and certify copies therefrom, and such certified copies shall be received in evidence in all courts and before all officers and tribunals in the same manner and to the same effect as if certified by a qualified Recorder of the Mining District. The production of a certified copy so made, shall be, without other proof, evidence that said records were properly in the custody of the County Recorder.

SEC. 3.—This Act shall take effect and be in force, from and after its passage.

Approved Feb. 21, 1878.

CHAPTER VII.

AMENDING CITY CHARTERS.

AN ACT amending the Charters of Incorporated Cities.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That the City Councils of the respective Cities of this Territory are hereby empowered, by ordinance and enforcement thereof, to compel persons to keep the side-walks in front of their respective places of business free from obstructions.

Power to compel the keeping of sidewalks free from obstructions.

SEC. 2.—To construct water works and reservoirs, lay water pipes, erect hydrants, and to keep the same in repair, to supply the said Cities with water, and regulate, control and protect the same, and for such purposes the City Council of any City shall have power to levy and collect a tax on real estate in any district or division of such City specially benefitted by any such improvement, sufficient to defray the expenses thereof; *Provided*, That an amount equivalent to the money thus raised shall be expended for such purposes exclusively within the district where such taxes are assessed and by such person or persons as said City Council may appoint. The City Council of the City where such tax may be levied, shall determine the amount to be assessed for any of the purposes above named; and the assessment shall be apportioned in the district to be benefitted by the improvement in which such assessment is made, either according to the extent of frontage of the property to be assesed, or upon real estate, including the improvements thereon; and in proportion to the benefits respectively resulting thereto by virtue of such improvement, as may be directed by such City Council, but in no case shall such assessment exceed one half of one per cent. on the property assessed. *Provided*, That if the apportionment is according to frontage, due allowance may be made in case of corner lots. Such City Council shall appoint three Commissioners, reputable citizens, who shall be sworn to faithfully and impartially execute their duties. Before enter-

Waterworks.

Tax to pay for, how levied.

Three Commissioners to be appointed to assess water tax.

Their duties.

ing upon their duties, the Commissioners shall give at least six days' notice by publication in some newspaper of general circulation in such City, or otherwise, as may be directed by such City Council, to all persons interested. The Commissioners shall assess the amount according to the apportionment previously directed by such City Council, on the real estate benefitted by such improvement. When the Commissioners shall have completed their assessment and made a correct copy thereof, they shall deliver the same to the City Recorder, of such City, within thirty days after their appointment, signed by all the Commissioners. The City Recorder shall cause a notice to be published to all persons interested, of the completion of the assessment, and the time and place shall be designated therein when such City Council shall hear appeals and objections and correct and affirm said assessment. When said assessment shall have been completed, such City Recorder shall, within ten days thereafter, make a correct tax list which shall be delivered to the City Collector of said City or any other authorized agent appointed by such City Council, who shall immediately proceed to collect such taxes, with the same authority, and in like manner, as other taxes are collected in such City. If the first assessment prove insufficient, another may be made in the same manner, or, if too large a sum shall at any time be raised, the excess shall be refunded, ratably, to those by whom it was paid.

Duty of Recorder.

Appeals and objections.

Excess refunded.

Expense paid by City reimbursed, how.

SEC. 3.—When improvements, of the kind mentioned in the preceding Section, have been made in any City, and the expense thereof has been paid out of the general funds of such City, or the obligation therefor has been incurred by it, the City Council thereof shall cause to be levied and collected a sufficient tax on the real estate especially benefitted by any such improvement, or improvements, for the purpose of reimbursing such City for the costs thereof; the levy and collection of such tax to be made in the manner provided in the preceding Section.

Assessment a lien on real estate.

SEC. 4.—Every assessment made in accordance with the foregoing provisions from the date of the completion thereof shall be a lien upon the real estate upon which it is levied.

SEC. 5.—That in convictions for misdemeanor, (as defined by the Penal Code of Utah, approved February 18, 1876,) committed within the limits of any City, where the arrest is made by an officer of such City, the fines accruing therefrom shall be paid into the Treasury of said City, and the imprisonment shall be in the City jail thereof, or in the County jail at the expense of such City. Misdemeanors committed in City limits.

SEC. 6.—All City Recorders, Treasurers, Marshals and Assessors and Collectors, shall be elected by the people in the same manner and for the same term, as members of the City Council are elected. City officers, how elected.

SEC. 7.—No member of any City Council shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected and for one year after the expiration of such term. Member of City Council shall not hold office when.

Approved February 22, 1878.

CHAPTER VIII.

OF REVENUE.

AN ACT to provide Revenue for the Territory of Utah and the several Counties thereof.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah*:—That there is hereby levied, and directed to be assessed and collected, annually, beginning with the year 1878, an *ad valorem* tax on all the taxable property in the Territory of Utah, as follows: three mills on the dollar for Territorial purposes; three mills on the dollar for the benefit of district schools; and such sum as the County Courts of the several Counties may designate for County purposes, not to exceed six mills on the dollar. Rate of taxation. Territorial. School. County.

SEC. 2.—All property, real and personal, situate and being in this Territory, is taxable, except: 1—Property owned by the United States; 2—Bonds All property taxable except.

Exemptions.

and other obligations of the United States; 3—Property owned by this Territory, or by any County, City, or School District; 4—Houses and other buildings and land occupied for public worship, owned by any religious denomination, so long as the same is used for public worship and no income is derived therefrom: but this subdivision does not include the residence of the Minister, Parson, or other person attendant upon such denomination; 5—Property owned by any scientific, charitable, or benevolent society, so long as such property, and the income that may be derived therefrom are used exclusively for the public good; 6—Public libraries, and libraries of literary and scientific associations, when no income is derived therefrom; 7—Private libraries and libraries of professional persons, not exceeding three hundred dollars in value; 8—Public squares and public grounds, used for amusement and pleasure, when no income is derived therefrom; 9—Shares of stock in corporations when the property of the corporation is taxable; 10—Cemeteries and graveyards used for interring the dead; 11—Property owned by any fire or military company, when used only for the public good, and no income is derived therefrom; mining claims and the products of mines and the ore in the mines.

Property.

Money.

SEC. 3.—Property, other than money, shall be assessed at a fair cash valuation. Money loaned, on hand, or on deposit, shall be assessed at its legal value; real estate shall be listed as real estate, and personal property shall be listed as personal property. Property taxable under this Act shall be listed and assessed as owned and valued on the first day of April of each year. From credits taxable under this Act, debts due and owing by the party to be assessed shall deducted in listing and assessing.

Assessment made as of first of April, each year.

Debts deducted from taxable credits.

Stocks and bonds.

Where assessed

SEC. 4.—Shares of stock in national banks shall be listed and assessed to the Shareholders. Shares of stock in corporations other than national banks, when the same are taxable, money and taxable bonds, shall be listed, assessed and the tax levied in the County in which the shareholder, the moneyholder, or bondholder resides. If the taxpayer be a corpor-

ation, holding intangible property, then in the County in which it has its principle place of business in this Territory. Property held in trust by an executor, administrator, or other trustee, shall be listed to such executer, administrator or trustee, in the County where such property is situated.

Property held in trust.

SEC. 5.—Property shall be assessed to the owner, if known; if the owner be unknown then to an unknown owner. The tax shall attach to and constitute a lien on the property assessed, from the day of assessment. If the taxpayer own both real estate and personal taxable property, the tax on the personal property shall also be a lien on the real estate. In each and every case the lien shall be paramount to all other liens whatsoever, and it shall not be removed therefrom until the tax is paid, or until the title vests thereto, under a sale thereof, by virtue of proceedings to enforce payment of the tax.

Tax shall be a paramount and lien.

SEC. 6.—In assessing real estate it shall be referred to with reasonable certainty, as to locality and quantity; it shall be sufficient in towns and and cities to give the number of the lot, block and plat; and on other lands, the approximate area within the section, or other legal subdivision.

Real estate, how designated.

SEC. 7.—The property, real and personal, of corporations shall be assessed and the tax collected to the same extent as if such property was owned by individuals.

Property of corporations.

SEC. 8.—In all cases where a railroad, owned by any person, partnership, firm, company or corporation, shall be located and constructed in one or more Counties, such road, and the real and personal property appertaining thereto, shall be assessed in the City, County or Counties in which the several portions thereof are or may be situated. The President, or other officer of such company or corporation, shall, on demand, give to the proper assessor, a statement containing a description of such road, and the real and personal property appertaining thereto, within the City or County where the same is to be assessed with the fair cash value thereof. Also the number of locomotives and cars of every description, commonly known as rolling stock, and their fair cash value; the whole length of said road

Railroad, how assessed.

President of railroad company shall furnish statement and description of property of company.

and the length of that portion thereof in such City or County, and an apportionment of the valuation of such rolling stock to such City or County, the same to be estimated according to the proportion to which the portion of said road, in such City or County, bears to the whole length of said road.

Property of corporations other than railroads.

SEC. 9.—Whenever any corporation other than railroads, shall own taxable property, a part of which is in one County, and a part of which is in another County, the tangible property shall be assessed in the County where situated.

Corporation.

Officer of shall furnish statement to Assesor

SEC. 10.—In all cases when the property of a corporation is to be assessed, the Assessor shall issue a written notice to the President, Secretary, Superintendent, or person in charge of the property of such corporation, that an assessment is to be made, requiring such President, Secretary, Superintendent, or person in charge of said property to make a statement, upon his oath or affirmation, of the real and personal property of such corporation, situate or being in the City and County where the assessment is to be made, and deliver the same to the Assessor within twenty days from date of said notice. It shall be sufficient to deposit said notice in the Post Office, postage prepaid, directed to such corporation at the place where it keeps its principal office or place of business.

Assessors and Collectors elected for two years

SEC. 11.—At the general election in 1878, and biennially thereafter, there shall be elected, by the qualified voters of the several Counties of this Territory, an Assessor and a Collector for each County, whose term of office shall be for two years and until their successors are duly elected or appointed and qualified, said Assessor and Collector, shall, before entering upon their duties, each respectively take and subscribe an oath of office and give a bond, with approved security, to the Territory and County, to the acceptance of the County Court, conditioned for the faithful performance of the duties of their respective offices; *Provided*, That in any County where the total revenue, provided for in this Act, does not exceed twenty thousand dollars per annum, the County Court at the June term next preceding the election, may direct that the Assessor shall also

Shall take oath and give bond.

Assessor shall also be Collector, when.

be the Collector, in which case his bonds shall be equal to that of a Collector only.

Amount of bond how determined

SEC. 12.—The County Court shall fix the bond of the Assessor in any sum not exceeding the whole amount of the tax of the previous year, nor less than one half; and the bond of the collector not exceeding twice, nor less than, the whole amount of the tax of the previous year. If at any time it shall appear to the County Court that the bond given by the Assessor or the Collector is insufficient in amount, or in the responsibility of the sureties, the said Court is hereby authorized and required to demand additional bonds with approved sureties; and in the event that the Assessor or the Collector shall refuse or neglect to furnish additional bonds with approved sureties, for a period of twenty days after due notice has been given, the County Court may declare the office vacant.

Amount of bond shall be increased, when.

County Court shall fill vacancies.

SEC. 13.—In case of the office of the Assessor or the Collector becoming vacant, the County Court of the County where such vacancy occurs shall have power to fill such vacancy by appointment until the next general election.

Compensation of Assessor and Collector, how fixed and paid.

SEC. 14.—The compensation to be received by Assessors and Collectors shall be as determined by the County Courts of their respective Counties; to be paid by the Territory and Counties *pro rata*.

Deputies.

SEC. 15.—The Assessor and Collector are each respectively hereby authorized to appoint one or more deputies for whose official acts he shall be responsible. Deputies shall be invested with the same powers as principals; they shall each take and subscribe a similar oath of office, and may be required to give a bond with sufficient sureties, payable to the officer appointing him, and in such sum as the principal may determine, conditioned for the faithful discharge of their official duties. Assessors and Collectors and their deputies are hereby empowered to administer oaths in the discharge of their official duties, and may require persons to give a statement of their taxable property under oath.

Principals and their deputies may administer oaths.

Assessor may leave blank which tax payer shall fill.

SEC. 16.—The Assessor may, when he deems it necessary, leave with the person to be assessed, or at his residence or place of business, a blank form of the assessment list—and with corporations, firms or

associations suitable forms—requiring the taxpayer to fill out and return the same to the Assessor within twenty days from date of service; and any person, corporation, firm or association furnished with said blank forms must comply with the requirements thereof, or be liable to a fine not to exceed one hundred dollars for each neglect. If any person shall willfully and knowingly make a false list to the Assessor, or make a false statement of his property, or of property under his control he shall be deemed guilty of a misdemeanor, and may be fined in any sum less than one hundred dollars, or imprisonment in the County jail not exceeding one hundred days, or by both. The County Court shall furnish to the Assessor a suitable book or books conveniently ruled and headed for designating the property to be assessed, which shall constitute the assessment roll.

Making false list, penalty of.

County Court shall furnish books.

SEC. 17.—On or before the first Monday in June in each year, the Assessor shall ascertain by diligent inquiry and examination, all property in his County, real and personal, subject to taxation, also so far as practicable, the names of all persons, corporations, companies or firms, owning, claiming or having the possession or control thereof, and shall determine the fair cash value of such property, and shall so list and assess the same to the person, firm, corporation, association or company, owning or having the possession, charge or control thereof, and make returns to the County Court. No assessment of property, or charge for taxes or assessments thereon, shall be considered illegal, on account of any irregularity or informality in the tax list or assessment rolls, or on account of the assessment rolls or tax list not being made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax list in any other name than that of the rightful owner; and no error or informality in the proceedings of any of the officers intrusted with the assessment and collection of taxes, not affecting the substantial justice of the tax or assessment itself, shall vitiate or in any way affect the tax or assessment.

Assessor shall make returns before first Monday in June.

Irregularities, informalities and errors, effect of.

SEC. 18.—The County Court of each County shall constitute a Board of Equalization in their re-

County Court constituted a Board of Equalization.

spective Counties. The Board of Equalization shall meet on the first Monday in June in each year, and shall continue in session from time to time until the business of equalization presented is disposed of. They shall have power to determine all written complaints made in regard to the assessed value of any property, and may change and correct any valuation, either by adding thereto or deducting therefrom, and if the Board of Equalization shall find it necessary to add to the assessed valuation of any property on the assessment roll, they shall direct their Clerk to give notice to the persons interested, by letter, postage prepaid, deposited in the Post Office, or otherwise, naming the day when they shall act in that case, and allowing a reasonable time to appear. During the sessions of the Board, the Assessor may be present, and shall have liberty to make any statement touching questions before the Board. The Board may remit or abate the taxes of any insane or idiotic person, infirm or indigent person to an amount not exceeding five dollars for the current year. During the session, or as soon as possible after the adjourment of the Board of Equalization, the Clerk shall enter upon said assessment roll all the changes and corrections made by the Board, and shall add up the columns of valuation and on or before the first day of July, he shall deliver to the tax Collector, a true abstract of the corrected roll, with the total [amount] of taxes to each person, firm, corporation and association, carried out in separate money columns, which said abstract list shall be duly certified by the clerk, and he shall report to the Territorial Auditor of Public Accounts the amount of Territorial and School Tax assessed in said County and shall file the original Assessment Roll in his office. All Territorial, School and County taxes provided for in this Act shall be due and payable on the 1st day of July annually, and any and all taxes remaining unpaid on the 31st day of October shall be deemed delinquent.

Power and duties of.

May increase tax.

May abate tax.

Clerk shall enter changes on assessment roll.

Taxes due July 1st.

Delinquent Oct. 31st.

SEC. 19.—On receipt of the abstract roll from the Clerk of the County Court, the Collector shall proceed to collect the taxes, and shall furnish to each taxpayer, or leave at his residence or usual place of business, (if known), a notice of the amount of tax

Collector, duties of.

assessed against him, and where and when payable. If any person neglect or fail to pay his taxes on or before the 31st day of October, in the year the taxes are assessed, it shall be the duty of the Collector to levy upon enough taxable personal property of the taxpayer, to pay the taxes and costs, and proceed to sell the same in manner hereinafter mentioned. Before making said sale, he shall give the owner, if known, and an inhabitant of the County, a notice in writing of the time and place of sale; he shall also cause public notice to be given, not less than ten nor more than forty days, of the time, place and kind of property to be sold, by posting up said notice in not less than three public places, in the vicinity; if real estate is to be sold, one of said notices must be posted up on the premises. When personal taxable property of a delinquent taxpayer is not found by the Collector, or if found is insufficient in amount to pay his taxes and costs, then the Collector is also authorized to levy upon and sell any real estate belonging or assessed to, such delinquent taxpayer. The property of non-residents or persons unknown, shall not be sold for taxes without giving notice of such sale by advertising at least five times in some newspaper published in the Territory, commencing at least twenty days previous to the date of sale. The Collector shall be entitled, as costs, to the same fees as a Sheriff or Constable for like services. The Collector is hereby authorized and empowered to collect taxes at the rate per cent. of the previous year, at any time after the property has been assessed, in all cases where he has reasonable grounds for supposing that such property will be removed from the County previous to the regular time for collecting. Whenever property shall be sold for taxes, the amount, if any, remaining over and above the tax and costs, shall be paid into the County Treasury, subject to the order of the person whose property was sold.

Delinquent taxes, property to be sold for.

Property of non-residents.

Fees of Collector for selling.

Property about to be removed.

SEC. 20.—When real estate is sold for taxes, the Collector shall issue a certificate to the purchaser, reciting substantially the facts of the non-payment of the tax, levy upon, advertisement and sale of said real estate, which certificate shall be *prima facie* evidence of the facts therein recited; a duplicate of

Real estate sold for taxes.

such certificate shall be filed by the Collector in the office of the Recorder of the County; *Provided*, that if at such sale no person bid and pay the Collector the amount of tax required to be paid as aforesaid on any real estate, the Collector shall make to the Probate Judge and his successors in office, for and in behalf of such County a certificate similar to that given to other purchasers, and such sale to the County shall have the same effect as if made to an individual.

When amount of taxes not bid at sale.

Certificate of sale made to Probate Judge.

SEC. 21.—Real estate sold for taxes, as aforesaid may be redeemed by any person, interested therein, at any time within two years after the date of the sale thereof, by such person paying into the County Treasury for the use of the purchaser, or his legal representatives, the amount paid by such purchaser, and all costs, as aforesaid, with interest at the rate of one and one half per cent. per month, on the whole, from the day of sale to that of the redemption, and all taxes that have accrued thereon and which have been paid by the purchaser after his purchase to the time of redemption.

Real estate sold for taxes may be redeemed within two years, how.

SEC. 22.—Money paid into the Treasury in redemption of real estate, purchased at a tax sale, and to which money such purchaser, or his assignee, is entitled, shall be paid to him by the Treasurer upon his applying therefor and producing the duplicate certificate of the purchaser or a copy thereof certified by the Recorder and endorsing thereon a receipt for the amount.

Treasurer to pay money received in redemption, when.

SEC. 23.—If any property, sold as aforesaid, be not redeemed within the time, and in the manner aforesaid, on presentation of the Collector's certificate, the Clerk of the County Court shall make out and deliver a deed therefor, conveying the same to the individual purchaser, or assignee, as the case may be; which deed shall recite, substantially, the amount of the tax, the year for which it was assessed, the day and year of the sale, the amount for which the real estate was sold, a full discription thereof, and the name of the purchaser, or assignee, and when attested by the seal of the County Court, such deed shall be *prima facie* evidence of the facts recited therein.

Property not redeemed, Clerk shall make and deliver deed for.

Deed shall contain, what.

Uncollected taxes.

SEC. 24.—Whenever the Collector shall furnish satisfactory proof to the County Court that he has exhausted all the taxable property, real and personal, of any delinquent taxpayer, the County Court shall credit the Collector with the amount of the tax of such delinquent remaining unpaid and shall report quarterly to the Auditor of Public Accounts the proportion of Territorial tax so credited to the Collector.

Collector to have credit for.

Clerk shall keep an account with Collector.

SEC. 25.—The Clerk of the County Court in each County shall keep an account with the Collector, debiting him with the amount of tax assessed and crediting him with the amounts paid; and the Collector is hereby required to pay to the County Treasurer, once a month, or oftener if required by the County Court, all funds collected by him, and shall take the Treasurer's receipt therefor, specifying the amounts paid in kind.

Collector shall pay over funds monthly or oftener.

When tax is paid, duty of Collector.

SEC. 26.—Whenever any tax is paid in full to the Collector he shall mark the word "paid" in the abstract rolls opposite the name of the taxpayer, and shall give a receipt therefor, specifying the payments each in cash, County warrants, Auditor's warrants, a duplicate of which the Collector shall keep upon the stub of his receipt book, and return said duplicate to the Clerk of the County Court quarter yearly.

CountyTreasurer shall make reports every ninety days or oftener.

SEC. 27.—The County Treasurers of the several Counties are hereby made sub-Treasurers of the Territory; and each County Treasurer shall make a report to the Territorial Treasurer, of all funds belonging to the Territory which he has received, once every ninety days, or oftener if required by the Territorial Treasurer, and hold the same subject to his order. Auditor's warrants shall be received for Territorial, and County warrants for County taxes.

Collector shall make settlement by Dec'r 31st.

SEC. 28—On or before the 31st day of December, in each year, the Collector of each County shall settle with the County Court, and make full payments into the County Treasury for all taxes due.

Taxes unpaid on Dec'r 31st.

If any tax shall remain unpaid to the Collector on the said 31st day of December, the Collector shall have, in his own individual right, a right of action the same as on express contract for the direct payment of money, against each delinquent. And no

property of such delinquent shall be exempt from execution on a judgment in such cases.

When property of delinquent is removed from one County to another, tax, how collected.

SEC. 29.—When a resident of one County removes his property to another County, without having paid the tax or taxes standing against him, it shall be the duty of the Collector of the County from which the delinquent has removed, to report the amount of tax or taxes due from said delinquent, to the Collector of the County to which the said delinquent has removed, and the Collector receiving such report of delinquency is hereby authorized and required to collect such tax or taxes, as in other cases.

Allowance to Collector on collection of such tax.

SEC. 30.—Collectors who shall collect delinquent taxes, as provided in the preceding Section, shall be entitled to one-half the per centage allowed the Collector by the County Court of the County where the tax originated, and shall promptly remit the sums collected, less said per centage, to the Collector from whom was received the report of such delinquency.

School tax to be disbursed under Sec. 608 Compiled Laws.

SEC. 31.—The revenue accruing under the provisions of this Act for the benefit of District Schools, shall be disbursed under the provisions of Section 608, Compiled Laws of Utah, relating to the distribution of funds for the benefit of District Schools or as may otherwise be provided for by law.

Terms employed in this Act defined.

SEC. 32.—Whenever the terms mentioned in this Section are employed in this Act, they are employed in the senses hereinafter affixed to them, except where a different sense plainly appears: 1—The term person, when applicable, includes firm, partnership, joint stock company, association and corporation; 2—Words in the singular number may include the plural, and words in the masculine may include the feminine; 3—The term property, includes both real estate and personal property, as hereinafter defined; 4—The term personal property includes money and all other property tangible and intangible except real property; 5—The term intangible property includes shares of stock in corporations and in joint stock companies and taxable bonds; 6—The term real property includes land, land claims and all improvements thereon; 7—The term real estate includes the ownership of or

claim to or possession of or right of possession to any real property in this Territory; 8—The term writing and written includes printing and printed, and the term printing and printed includes writing and written; 9—The term Auditor's warrants, is an order drawn by the Auditor of Public Accounts, under his seal of office, on the Territorial Treasurer, directing him to pay a named sum to a named person, or bearer, and can only be drawn on an appropriation made by the Legislative Assembly; 10—The term County warrant, is an order drawn by the County Clerk, under the seal of the County Court, on the County Treasurer, directing him to pay a named sum to a named person, or bearer, and can only be drawn on an appropriation made by the County Court.

Parts of Secs. 591 and 608 Compiled Laws repealed.

SEC. 33.—All that part of Section 591, Compiled Laws of Utah, which reads as follows: "To assess and collect, annually, a tax of one fourth of one per cent. on all taxable property, within their districts, for school purposes, and shall have power to remit taxes;" also so much of Section 608, Compiled Laws of Utah, as relates to the appropriation of twenty-five thousand dollars annually for the use of schools, in this Territory; and all Acts and parts of Acts heretofore passed in relation to assessing and collecting County and Territorial taxes, supersed [superseded] by or in conflict with any of the provisions of this Act are hereby repealed; *Provided*, Always, that such repeal shall not affect, or in anywise impair any right accruing or any liability, forfeiture or penalty incurred under such repealed acts, or parts of acts, or affect any suit, prosecution or proceeding begun or pending previous to the said repeal; but all rights, forfeitures, liabilities or penalties incurred under said Acts may be enforced the same as if such repeal had not been made, nor shall such repeal affect the right to any office or change the term or tenure thereof; and the Assessors and Collectors now in office in their respective Counties are hereby authorized and empowered to assess and collect the Territorial, School and County taxes for 1878 under the provisions of this Act. All delinquent taxes due and remaining unpaid on the 1st day of March, 1878, shall be collected of the person

All conflicting Acts and parts of Acts repealed

Proviso.

Delinquent taxes due and unpaid March 1st, 1878.

assessed in accordance with the provisions of this Act by the Collectors of their respective Counties.

Approved February 22, 1878.

CHAPTER IX.

INCORPORATING SILVER REEF CITY.

AN ACT to Incorporate Silver Reef City, in Washington County, Utah Territory.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah*:—That all that portion of country situated within the following boundaries, to wit: Beginning at a point one-half mile east of the Christy Quartz Mill, running south one mile, thence west two miles, thence north two miles, thence east two miles, thence south one mile to the place of beginning, shall be known and designated by the name of Silver Reef City; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and may have and use a common seal, which they may change and alter at pleasure.

Boundaries.

Inhabitants therein constituted body corporate.

SEC. 2.—The inhabitants of said City, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended, in all courts of law and equity, and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said City; to purchase, receive and hold property beyond the City for burying-grounds or other public purposes for the use of the inhabitants of said City; to improve and protect such property, and to do all other things in relation thereto as natural persons.

Powers of corporation.

SEC. 3.—There shall be a City Council, to consist of a Mayor and five Councilors, who shall have the qualifications of electors of said City, and shall be chosen by the qualified voters thereof; and shall hold their offices for two years, and until their suc-

City Council shall consist of.

How elected.

Powers of.

cessors shall be elected and qualified. The City Council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members, under such penalties as may be prescribed by ordinance; there shall also be elected in like manner one Justice of the Peace, who shall have the qualification of a voter, be commissioned by the Governor, and have jurisdiction in all cases arising under the ordinances of the City.

Justice of the Peace to be elected.

Oath of Mayor and Councilors.

SEC. 4.—The Mayor and Councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation, that they will support the Constitution of the United States, and the Laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

First election.

SEC. 5.—One Mayor and five Councilors shall be elected biennially, and the first election under this Act, shall be at such time in said City as the Probate Judge of Washington County shall direct; *Provided*, Said election shall be on or before the first Monday of May next. Said election shall be held and conducted as now provided by law for holding of elections for County and Territorial officers; and, at the first election, all voters, legally qualified, shall be entitle to vote.

Notice of election.

SEC. 6.—The Clerks of election shall leave with each person elected, or at his usual place of residence, within five days after election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the Recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof be made, as may be provided for by ordinance of the City Council.

Oath to be taken, when.

Subsequent elections.

Council power to levy taxes.

SEC. 7.—The City Council shall have authority to levy and collect taxes for City purposes upon all taxable property, real and personal, within the limits of the City, not exceeding one half of one per cent. per annum upon the assessed value thereof;

and may enforce the payment of the same, to be provided for by ordinance, not repugnant to the Constitution of the United States, or to the laws of this Territory.

To appoint officers.

SEC. 8.—The City Council shall have power to appoint a Recorder, Treasurer, Assessor and Collector, Marshal and Supervisor of Streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all City officers and remove them from office at pleasure.

Power to require bonds and oath of officers.

SEC. 9.—The City Council shall have power to require of all officers, appointed in pursuance of this Act, bonds with security, for the faithful performance of their respective duties, and also to require of all officers, appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

To make ordinances.

SEC. 10.—The City Council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said City; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; they shall have power to fill all vacancies that may happen by death, resignation or removal of any of the officers herein made elective; to fix and establish the fees of the officers of said Corporation. The City Council shall have the power to divide the City into wards and specify the boundaries thereof.

To divide City into wards.

Ordinances to be published in a newspaper or posted.

SEC. 11.—All ordinances passed by the City Council shall, within ten days after they shall have been passed, be published in some newspaper, printed in said City, or certified copies thereof be posted up in three of the most public places in the City. They shall not be in force until thus published or posted up.

Ordinances, how proven.

SEC. 12.—All ordinances of the City may be proven by the seal of Corporation affixed thereto; and when printed or published in book or pamphlet form, purporting to be printed or published by the

authority of the Corporation, the same shall be received in evidence in all courts and places, without further proof.

Mayor, duties of

SEC. 13.—The Mayor shall be the chief executive officer of said corporation; he shall preside in the City Council, and shall have power to veto any ordinance, when not passed by four-fifths majority, and and it shall be his duty, to sign all city ordinances.

Veto Power.

Act to take effect.

SEC. 14.—This Act shall be in force on and after the first day of April, A. D. one thousand, eight hundred and seventy-eight (1878), and may be amended or repealed at the pleasure of the Legislative Assembly.

Approved February 22, 1878.

CHAPTER X.

OF COMPILED LAWS.

AN ACT concerning the Compiled Laws of Utah.

Compiled Laws approved and adopted.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:—That the "Compiled Laws of Utah," published under the auspices of the Special Committee, viz: A. O. Smoot, S. S. Smith, and R. T. Burton, who were appointed by the Governor and Legislative Assembly of this Territory, during the session of 1876, are hereby approved and adopted.

Approved February 22, 1878.

CHAPTER XI.

OF ELECTIONS.

AN ACT to provide for Special Elections to Fill Vacancies.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That in case of the death, resignation, or other disability of any Territorial officer, made elective in this Territory, it shall be the duty of the Governor, within ten days after receiving notice of the death, resignation, or other disability of such officer, to call a special election in the Territory or District where such vacancy shall have occurred, for the purpose of filling the same.

Territorial office, vacancy in, how filled.

SEC. 2.—In case of a vacancy, by the death, resignation, or other disability of any County or Precinct officer, made elective in any County in this Territory, it shall be the duty of the County Court in such County, within twenty days after any such vacancy shall occur, to order a special election in the County or Precinct where such vacancy shall occur, to fill the vacancy: *Provided*, That if any person shall neglect or fail to qualify within twenty days after receiving notice of having been elected to any County or Precinct office, such office shall be deemed vacant.

County or Precinct office, vacancy in, how filled.

SEC. 3.—All officers elected to fill vacancies, as provided in this Act, shall, before entering upon the duties of their office, qualify in the same manner as though they had been elected at any general election, and shall hold office until the ensuing general election, or until their successors are elected and qualified.

Officers elected to vacancy.

SEC. 4.—The special elections, as contemplated in this Act, shall be held, conducted and returns thereof made in the same manner as is now, or may hereafter be, provided for general elections in this Territory. The Territorial Treasurer and Auditor of Public Accounts shall be hereafter elected by the qualified voters at the general election in August, 1878, and biennially thereafter, and the present in-

Special elections, how held.

Treasurer and Auditor, how and when elected.

cumbents shall hold their respective offices and perform the duties of the same until the next general election, and until their successors shall be elected and qualified.

Approved February 22, 1878.

CHAPTER XII.

OF ELECTIONS.

AN ACT providing for the Registration of Voters, and to further regulate the manner of conducting Elections in this Territory.

Assessors constituted Registration Officers.

May appoint Deputy.

Duty of.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That the Assessors in their respective Counties are hereby constituted the Registration Officers, and they are required to appoint a resident deputy in each Precinct to assist in carrying out the provisions of this Act, and before the first Monday in June, 1878, in person or by deputy they shall visit every dwelling in each Precinct, and make careful inquiry as to any or all persons entitled to vote, and each Assessor or deputy in all cases, shall ascertain upon what ground such person claims to be a voter, and he shall require each person entitled to vote and desiring to be registered, to take and subscribe in substance the following oath or affirmation:

TERRITORY OF UTAH, } *ss.*
COUNTY——— }

Oath of voter.

I,———, being first duly sworn, depose and say that I am over twenty-one years of age and have resided in the Territory of Utah for six months, and in the precinct of———one month next preceding the date hereof, and (if a male,) am a "native born" or "naturalized" (as the case may be,) citizen of the United States, and a taxpayer in this Territory (or, if a female,) I am "native born" or "naturalized" or the "wife," "widow," or

"daughter," (as the case may be,) of a native born or naturalized citizen of the United States.

Subscribed and sworn to before me this——— day of———A. D. 18—.

———————

Assessor.

Upon the receipt of such affidavit, the Assessor, as aforesaid, shall place the name of such voter upon the Register List of the voters of the County.

SEC. 2.—It shall also be the duty of the Assessor of each County, in person or by deputy, at the time of making the annual assessment for taxes in each year, beginning in 1879, to take up the transcript of the next preceding Registration List, and proceed to the revision of the same, and for this purpose he shall visit every dwelling house in each Precinct, and make careful inquiry if any person, whose name is on his list, has died, or removed from the Precinct, or is otherwise disqualified as a voter of such Precinct, and if so, to erase the same therefrom, or whether any qualified voter resides therein, whose name is not on his list, and if so, to add the same thereto, in the manner as provided in the preceding Section.

Assessor, duty of.

Shall make list of voters.

SEC. 3.—It shall also be the duty of each Assessor, in person or by deputy, during the week commencing the first Monday in June of each year, at his office, or enter on his Registry List the name of any voter that may have been omitted, on such voter appearing and complying with the provision of the first Section of this Act required of voters for registration purposes.

Same.

SEC. 4.—Upon the completion of the list, it shall be the duty of each Assessor as aforesaid, to proceed to make out a list in alphabetical order for each Precinct, containing the names of all the registered voters of such Precinct, and shall on or before the first day of July in each year deliver all of said lists and affidavits to the Clerk of the County Court.

Same.

SEC. 5.—The Clerk of the County Court shall deliver to the Assessor the Registry Lists whenever necessary for the revision thereof, or adding names thereto, and the Assessor, in person or by deputy, shall, during the week commencing the second Mon-

Clerk of County Court shall deliver Registry Lists to Assessor.

day in September in the year 1878, and every second year thereafter, enter names of voters on the Registry List in the manner provided in Section three of this Act, and upon the list being completed, proceed as required by Section four of this Act. *Provided*, That in such case he shall deliver the list and affidavits on or before the tenth day of October in such year.

Voters removing.

SEC. 6.—Voters removing from one election Precinct to another in the same County may appear before the Assessor at any time previous to the delivery of the Registry List to the Clerk of the County Court, and have their names erased therefrom, and they may thereupon have their names registered in the Precinct to which they may remove.

Clerk shall preserve Lists, etc.

SEC 7.—The Clerk of the County Court, shall file, and carefully preserve all said affidavits and Registry Lists and shall make a copy of each Precinct Registry List, and cause the same to be posted up at least fifteen days before any election, at or near the place of election, and shall make and transmit another copy to the Judges of Election.

Clerk shall give notice of election.

SEC. 8.—The Clerk of the County Court, shall cause to be printed or written a notice which shall designate the offices to be filled, and stating that the election will commence at————(designating the place for holding the polls,) one hour after sunrise, and continue until sunset on the————day of————, 18—. (Naming the day of election.) Dated at————A. D. 18—.

Form of notice.

————————

Clerk of the County Court.

Copy of notice to be posted.

A copy of which shall be posted up, at least fifteen days before the election, in three public places in said Precinct, best calculated to give notice to all the voters. It shall also be the duty of the Clerk of the County Court to give notice on the lists so posted, that the senior Justices of the Peace for said Precinct will hear objections to the right to vote, of any person registered, until sunset of the fifth day preceding the day of election. Said objections shall be made by a qualified voter in writing and delivered to the said Justice, who shall issue a written notice to the person objected to, stating the place, day and hour when

Notice that Justice will hear objections.

the objection will be heard. The person making the objection shall serve, or caused to be served, said notice upon the person objected to, and shall also make returns of such service to the Justice before whom the objection shall be heard. Upon the hearing of the case, if said Justice shall find that the person objected to is not a qualified voter, he shall, within three days prior to the election, transmit a certified list of the names of all such unqualified persons, to the Judges of Election and said Judges shall strike such names from the Registry List before the opening of the polls.

Objection, how heard and determined.

SEC. 9.—The County Court shall, at its first session in June of each year, appoint three capable and discreet persons, in each Precinct in the County, one at least of whom shall be of the political party that was in the minority at the last previous election, if any such party there be in such Precinct to act as Judges of general and special elections; and they shall designate one of the persons appointed to preside, and the other two to act as Clerks of said elections. And the Clerk of said Courts shall make out certificates of said appointments and transmit the same by mail or other safe conveyance to the persons so appointed, who, previous to entering upon said office, shall take and subscribe an oath, to the effect that they will well and faithfully perform all the duties thereof to the best of their ability, and that they will studiously endeavor to prevent any fraud, deceit or abuse at any election over which they may preside. If, in any Precinct, any of such Judges decline to serve or fail to appear, the voters of said Precinct first assembled on the day of election, to the number of six, at or immediately after the time designated for opening the polls, may elect a Judge or Judges to fill the vacancy and the persons so elected shall qualify as hereinbefore provided.

Judges of Election, how appointed.

SEC. 10.—The County Court shall provide the necessary books, blanks, stationery and ballot boxes, which ballot boxes shall be made of galvanized iron of suitable size, with Yale or other safe lock, and two keys. One of the keys to be kept by the Judges of Election, and one by the Clerk of the County Court; *Provided*, If any County has good and substantial ballot boxes with Yale locks and keys,

Ballot boxes, books and stationary, how provided, etc.

the same may be used. There shall be an opening through the lid of each ballot box, of sufficient size to admit a single ballot.

Envelopes for election purposes to be furnished by County Court.

SEC. 11.—The County Court shall furnish the Judges of Elections, in every Precinct, with a sufficient number of plain envelopes for election purposes. Said envelopes shall be uniform in color and size, without any marks, writing, printing, or device upon them; and no other kind shall be used at any given election. Before opening the polls, the ballot box shall be carefully and publicly examined by the Judges of Election, who shall satisfy themselves that nothing is therein. It shall then be locked and the key thereof, delivered to the presiding Judge; and said ballot box, shall not be opened during the election.

Ballot box to be examined.

Clerk of Election, how designated.

SEC. 12.—At the opening of the polls at all general or special elections, the Judges of Election, for their respective Precincts, shall designate one of the Judges, acting as Clerk, who shall have in custody the Registry of Voters, and shall make the entries therein required by law; the other of said Judges acting as Clerk, shall write the name of each person voting, and opposite [to] it, the number of the vote.

Duty of.

Ballots.

SEC. 13.—Every voter shall designate on a single ballot, written or printed, the name of the person or persons voted for, with a pertinent designation of the office to be filled. And when any question is to be decided, in the affirmative or negative, he shall state the proposition at the bottom of the ballot, and write thereunder "Yes" or "No" as he may desire to vote thereon; which ballot shall be neatly folded and placed in one of the envelopes hereinbefore provided for, and delivered to the presiding Judge of Election, who shall, in the presence of the voter, on the name of the proposed voter being found on the Registry List, and on all challenges to such vote being decided in favor of such voter, deposit it [in] the ballot box, without any mark whatever being placed on such envelope; otherwise, the ballot shall be rejected.

Mode of voting.

When ballot is deposited, duty of election officers.

SEC. 14.—Whenever any ballot shall be deposited in the ballot box, the Judge having the Registry List, shall write the word "voted," opposite the

name of the person casting the vote, and the other Judge acting as Clerk shall write the name of the voter, and the number of the vote upon a list, to be made by such Judge.

Canvass of votes polled.

SEC. 15.—As soon as the polls shall be closed, the Judges of Election shall immediately proceed to canvass the votes cast at such election, and continue without adjournment until completed. And all candidates voted for, may be present, either in person or by representative, to witness said canvass. If any envelope contains two or more ballots of the same kind, folded together, one only shall be counted.

Who may witness same.

Canvass of votes.

SEC. 16.—The canvass shall commence by the Judges who have acted as Clerks of the Election comparing their respective lists and ascertaining from said lists the number of votes cast. The box shall then be opened and the ballots therein taken out and counted by the Judges, and the Judges, acting as Clerks, shall each make a list of all the persons voted for. The presiding Judge shall then proceed to open the ballots and call off therefrom the names of the persons voted for, and the offices they are intended to fill; and the Judges, acting as Clerks, shall take an account of the same upon their lists; and all the ballots shall be immediately returned to the ballot box; and the ballot box shall be locked and securely sealed.

How commenced and conducted.

Result of canvass, how certified.

SEC. 17.—After the canvass shall have been completed, the Judges of Election shall add up and determine the number of votes cast for each person, for the several offices, which result shall be placed on the lists made by the Judges acting as Clerks of the Election, and the Judges shall thereupon certify to the same, and forward all the lists securely sealed, together with the ballot box, to the Clerk of the County Court, by a qualified voter of the County, who shall, before taking the same, take and subscribe an oath to the effect that he will deliver the the same to the said Clerk without unnecessary delay, and that he will use his utmost ability to prevent any interference whatever therewith by any person whatsoever.

SEC. 18.—On receipt of the ballot boxes, and returns of election, the Clerk of the County Court,

in the presence of, at least, one member of the County Court, who is not publicly known as a candidate voted for at such election, shall break the seal of the returns, and all candidates may be present as provided in Section fifteen of this Act, and said Clerk and member or members of the County Court shall carefully examine the returns; and if no irregularity or discrepancy appear therein, affecting the result of the election of any candidate, they shall accept said returns as correct; but if the right of any person voted for, for any office, is in any way affected, then the Clerk and said members of the County Court shall open the ballots from said Precinct and canvass the same, so far as to determine the rights of the person whose office may be affected. They may also cause to appear before them any persons whom they may deem proper, and take their testimony in relation to said election, in said Precinct.

Returns, examination of.

SEC. 19.—If there shall be any disagreement in the returns, in regard to the number of votes cast for any Teritorial officer, or any officer whose election is effected by the votes of more Counties than one, then said members of the County Court shall canvass the votes, and proceed as herein directed. After the completion of the canvass, said member or members and Clerk of the County Court, shall declare the result thereof, and the Clerk of the County Court shall immediately make out and transmit a certificate of election to each person elected to any Precinct or County office: *Provided*, That whenever a tie shall occur between two or more persons for the same office, the Clerk of the County Court shall notify each of them thereof, and the same shall be decided by lot in the presence and under the direction of the County Court. The notice herein provided for shall state the time and place and the manner in which the tie is to be decided. If either of the persons notified fail to appear by self or agent, such person shall be deemed to have waived all right to the office, and the Clerk shall issue the election certificate to the person appearing; if neither of them appear by self or agent, the office shall be deemed vacant, and may be filled as in case of other vacancies.

Returns, disagreement in.

In case of a tie.

SEC. 20.—Immediately after the inspection of the ballots in any ballot box, the ballots shall be returned into the box, which shall be locked and securely sealed, and the boxes shall be so preserved for ten days after the result of the election has been declared, and immediately after the expiration of the ten days, and no notice of a contest being filed, requiring further delay, the Clerk of the County Court shall, in the presence of at least one of the members of the County Court and such candidates voted for as may be present, open each of the ballot boxes and destroy all ballots contained therein.

Ballots, how disposed of after election.

SEC. 21.—The Clerk of the County Court shall also, as soon as possible after the result of the election has been so determined, make out a general abstract thereof in triplicate, and certify to the correctness thereof, one of which he shall file, and one of which he shall post up in his office, and forward to the Secretary of the Territory a certified copy of the names of the persons voted for and the number of votes each has received for Territorial offices. The envelope containing said abstract shall be plainly marked "Election Returns from———— County." (Filling in the name of the County as the case may be.)

Results of election, how certified.

SEC. 22.—As soon as all the returns are received by the Secretary of the Territory he shall, in the presence of the Governor, unseal and canvass the same, and make an abstract thereof, and the Secretary shall, within ten days thereafter, make out and transmit a certificate of election to each member of the Legislature and Territorial officers elected.

Returns, how canvassed.

Certificate of election.

SEC. 23.—The Assessors and their deputies shall receive such compensation for their services, required by this Act, as the County Court shall determine; and the Judges of Election shall receive for their services, thirty cents per hour for all services rendered in conducting elections and canvassing votes, and each of said officers is hereby authorized to administer oaths whenever necessary to carry into effect the provisions of this Act.

Compensation of Assessor and election officers.

SEC. 24.—The Judges of Elections shall receive for their services three dollars per day; and thirty cents per hour for all services rendered in canvassing votes. All Municipal elections shall be held and

Judges of Election, compensation of.

Municipal elections.

conducted, and the returns and canvass of votes thereof, made substantially in accordance with the provisions of this Act, and it shall be the duty of the City Councils, of their respective Cities, to provide for the registering of voters and the appointment or election of all officers necessary, and to furnish all necessary appliances for the carrying out of the provisions of this Section; and to aid them therein, the Clerk of the County Court, on the demand of the Recorder of any municipal corporation, shall, on payment of the proper fees, furnish a certified copy of the Registry List of voters of any Precinct, or part thereof, within any such municipality.

Omissions and irregularities.

SEC. 25.—Any omission or irregularity of any Assessor or other officer, pertaining to election matters, shall not invalidate any election or authorize the rejection of any legal votes cast, except to the extent that such omission or irregularity shall have prevented a fair vote.

Falsifying returns, fraud or failure to perform duties, penalty for.

SEC. 26.—Any person who shall falsely make any return, or falsely make any certificate of election returns, or who shall in any manner procure or assist in the making of the same or cause the same to be done, or who shall in any manner do or cause any fraud in any election, or having entered upon any of the offices or duties provided for in this Act, shall willfully fail or neglect to perform any of the duties required of such officer or person, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding the sum of one thousand dollars, or be imprisoned in the Penitentiary for a term not exceeding two years.

False oath under this Act.

SEC. 27.—If any person who is required by this Act to take an oath, shall falsely swear, such person shall be deemed guilty of perjury.

Riotous conduct or interfering with voter.

SEC. 28.—Any person who shall disturb or be guilty of any riotous conduct at any election in this Territory, or who shall disturb or interfere with the canvassing of the votes, or interfere with the making of the returns, or who shall interfere with any voter in the free exercise of the elective franchise, shall be deemed guilty of a misdemeanor.

SEC. 29.—Any person who shall give, or promise, or offer to give to an elector, any money, reward, or other valuable consideration for his or her vote

at an election, or for withholding the same, or who shall give, or promise to give, such considerations to any other person or party, for such elector's vote, or for the withholding thereof, or any elector who shall receive or agree to receive, for himself, or for another, any money, reward or other valuable consideration for his vote at an election, or for withholding the same, shall be deemed guilty of a misdemeanor, and shall also forfeit the right to vote at such election; and any elector whose right to vote shall be challenged for such cause, before the election officers, shall be required to swear or affirm that the matter of the challenge is untrue, before his vote shall be received.

Giving or offering bribe to influence voter—made a misdemeanor.

Voter, when challenged, shall swear.

SEC. 30.—Any person who shall offer any bribe, threat or intimidation to any elector for the purpose of influencing his or her vote, or shall examine any ballot offered or cast at the polls, or found in any ballot box, for any other purpose than to ascertain what candidate has been elected, or who votes more than once at any one election or knowingly offers to vote two or more ballots, or in any manner changes any ballots after the same has been deposited in the ballot box, or adds, or attempts to add, any ballot to those legally polled, shall be deemed guilty of a misdemeanor.

Threats, intimidation, interference with ballot or ballot boxes.

SEC. 31.—This Act shall take effect on and after the first Monday of March, A. D. 1878.

Act takes effect, when.

SEC. 32.—The provisions of all Acts and parts of Acts superseded by, or in conflict with any of the provisions of this Act, are hereby repealed.

Conflicting Acts and provisions repealed.

Approved February 22, 1878.

CHAPTER XIII.

INCORPORATING RICHFIELD CITY.

AN ACT to Incorporate the City of Richfield, in Sevier County.

Boundary.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah*:—That all that district of country, in Sevier County, embraced in the following boundaries, to-wit: commencing at the north-east corner of section twenty-five, in Township twenty-three, south of Range three west, thence west two miles, thence south two miles, thence east two miles, thence north two miles to the place of beginning, shall be known by the name and style of the City of Richfield, and the inhabitants thereof are hereby constituted a body corporate and politic, by the name and style aforesaid, and shall have succession, with power to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity, and may have and use a common seal and alter the same at pleasure.

Inhabitants made body corporate.

Power of Corporation.

SEC. 2.—The inhabitants of said City shall have power in their corporate capacity to receive, hold, sell, lease, convey and dispose of property, both personal and real, for the benefit of said City.

Mayor and Councilors.

SEC. 3.—There shall be a City Council to consist of a Mayor and seven Councilors, who shall have the qualifications of electors of said City, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The City Council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members under such penalties as may be prescribed by ordinance.

Justice of the Peace.

There shall also be elected in like manner, one Justice of the Peace, who shall have the qualification of a voter, be commissioned by the Governor, and have jurisdiction in all cases arising under the or-

dinances of the City, and shall have the same authority and power of other Justices of the Peace, both in civil and criminal cases, arising under the laws of the Territory; he shall perform the same duties, be governed by same laws, give the like bond and security as other Justices of the Peace, and he shall have exclusive jurisdiction in all cases arising under the ordinances of the Corporation, and shall issue such process as may be lawful and necessary to carry such ordinances into execution. Appeals may be had from any judgment of said Justice, arising under the ordinances of said City, or the laws of the Territory, in the same manner as appeals are or may be taken from other Justices' Courts.

Powers and duties of.

SEC. 4.—The Mayor and Councilors, before entering upon the duties of their respective offices, shall take and subscribe an oath or affirmation, that they will support the Constitution of the United States and the laws of the Territory of Utah, and that they will well and truly perform the duties of their offices.

Oath of City officers.

SEC. 5.—The Justice of the Peace shall be required to give a bond with security, to the acceptance of the Probate Judge of Sevier County, for the faithful performance of his duties. Said bond shall be filed with the Clerk of the County Court.

Justice shall give bond.

SEC. 6.—That a Mayor, a Justice of the Peace and seven Councilors, shall be elected on the first Monday in August, A. D. 1878, and every two years thereafter. Said election shall be held, conducted, and returns thereof made as is now provided by law, for holding elections for Territorial and County officers. The Clerk of the County Court shall, within ten days, furnish each person elected a certificate of election; and each person elected shall qualify within twenty days thereafter. All subsequent elections shall be held, conducted, and the returns made, as may be provided by ordinance.

Elections, when held.

Clerks of County Courts shall furnish certificates of election.

SEC. 7.—That the City Council is hereby authorized to hold regular or special sessions for the transaction of business, a majority of whom shall form a quorum to do business, and the Mayor shall preside when present; otherwise, any Councilor may be appointed to preside *pro tem.*

City Council, sessions and quorum of.

City Council.

SEC. 8.—The City Council shall have power to appoint a Recorder, Treasurer, Assessor and Collector, Marshal, Supervisor of Streets, Poundkeeper, and such other officers as may be deemed necessary, define their duties and qualifications; *Provided*, No member of the Council shall be eligible to fill such office.

Power to appoint officers.

Power to levy taxes.

SEC. 9.—That after the first Monday in August, A.D. 1880, the City Council shall have power to levy and collect a tax, not exceeding one-half of one per cent. per annum, on all the taxable property in said City. Said tax shall, when levied, constitute a lien on all said property, which may be collected in such manner as may be provided by the ordinance of said City.

Council, power of.

SEC. 10.—That the City Council shall have control of all the public property of said City, and have power to regulate and control the water of said City; *Provided*, That it does not infringe upon any previously acquired right to water, by actual settlers therein; to open and keep in good repair the streets of said City, to set out and protect shade trees thereon, and on any public grounds belonging to the City, and to improve the same. To make regulations to prevent the introduction of contagious diseases into the City, and for five miles next beyond its boundaries.

Same.

SEC. 11.—To establish hospitals, to declare what shall be nuisances and remove the same, to control the streets and sidewalks, and to protect the same from encroachment and injury; to provide for the erection of needed public buildings for the use of the City.

Same.

SEC. 12.—To license, tax, restrain or prohibit the manufacturing, vending, or giving away of spiritous, vinous or fermented liquors; to license, tax, and regulate the business of tavern keepers, merchants, grocers and restaurateurs.

Same.

SEC. 13.—To appoint watchmen and policemen, and prescribe their duties, powers and qualifications. To restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all and every kind of poultry, and to tax and regulate the keeping of dogs, and authorize the de-

struction of the same when at large. To empound stock, collect fines and damages thereon.

Same. SEC. 14.—To repress or prohibit all disorderly houses, and to prevent routs and riots and disturbances or disorderly assemblies.

Same. SEC. 15.—To restrain and punish vagrants, prostitutes and libertines. To license, tax, regulate or suppress, or prohibit all exhibitions of showmen, concerts, theatricals, circuses, or other traveling shows, public dances or amusements.

Same. SEC. 16.—To regulate the registration of births and deaths, and arrange, control and protect the places of the burial of the dead.

All ordinances to be published or posted. SEC. 17.—All ordinances passed by the City Council shall, within thirty days after they shall have been passed, be published in some newspaper printed in said City, or certified copies thereof be posted up in three public places in the City.

Approved February 22, 1878.

CHAPTER XIV.

AMENDING CHARTER OF WASHINGTON CITY.

AN ACT amending the Charter, and reducing the Boundaries of Washington City.

Boundaries reduced to. SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That Section one of "An Act incorporating Washington City in Washington County," approved February 18, 1870, is hereby amended by reducing the boundaries of Washington City therein specified within the following described limits, to-wit: Beginning at the north-east corner of the City of St. George, running thence east two and a half miles, thence south two and a half miles, thence west two and a half miles, thence north, along the east line of St. George, two and a half miles, to the place of beginning.

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Elections.

SEC. 2.—The proviso in Section five of the Act hereinbefore mentioned, is hereby repealed and the elections authorized in said Section may be holden at the next or any subsequent general election.

Approved February 22, 1878.

CHAPTER XV.

OF THE PENAL CODE.

AN ACT supplemental to the Penal Code.

"Salting" mines and obtaining money under false pretenses.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah :*—That any person who shall, with intent to cheat or defraud, place in or upon any mine or mineral claim, any ores or specimens of ores not extracted therefrom, or exhibit any ore or certificate of assay of ore, not extracted therefrom, for the purpose of selling any mine or mining claim or any interest therein, or who shall obtain any money or property by any such false pretense or artifice, shall be deemed guilty of a misdemeanor.

Changing samples of ores or bullion with intent to defraud.

SEC. 2.—Any person who shall interfere with or in any manner change samples of ores or bullion produced for sampling, or change or alter samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying with intent to cheat or defraud, shall be deemed guilty of a misdemeanor.

Making false samples.

SEC. 3.—Any person who shall, with intent to cheat or defraud, make or publish a false sample of ore or bullion, or who shall make or publish or cause to be published a false assay of ore or bullion, is guilty of a misdemeanor.

Section 1009 of Compiled Laws repealed.

SEC. 4.—That Section one thousand and nine (1009), Compiled Laws of Utah, is hereby repealed.

Approved February 22, 1878.

CHAPTER XVI.

OF SPRINGVILLE CITY CHARTER.

AN ACT reducing the Boundaries and supplementary to the Charter of Springville City.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That Section one (1) of An Act incorporating the City of Springville be amended after the words "of the" in the sixth line, strike out the words "south-east corner of Springville survey, thence west to Utah Lake," and substitute the following, viz: "to its intersection with the section line between section twelve (12) and thirteen (13), in Township eight, south of Range three East, Salt Lake Meridian, thence west on said section line to the north-west corner of section sixteen (16), thence north forty-five degrees, west to the Utah Lake." Amendments to Charter.

SEC. 2.—The City Council of Springville, shall have power and authority to direct and control the location of railroad tracks and depot grounds as may be desired within the limits of Plat A. in said City. Power of City Council.

SEC. 3.—To prevent horse-racing, immoderate riding or driving in the streets, and to authorize their being stopped by any person; to punish or prohibit the abuse of animals; to compel persons to put up posts in front of their lots, to fasten their horses or other animals; to compel the fastening of horses, mules, oxen, or other animals attached to vehicles, while standing or remaining in the streets. Same.

SEC. 4.—To prevent the encumbering of the streets or sidewalks, lanes, alleys, and public grounds, with carriages, tents, wagons, carts, sleighs, horses, or other animals, sleds, wheelbarrows, boxes, lumber, timber, firewood, posts, awnings, signs, adobies, or any material or substance whatever. Same.

SEC. 5.—To prevent or regulate the rolling of hoops, playing at ball, flying of kites, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks, or to frighten teams or horses. Same.

Same. SEC. 6.—To regulate and license or prohibit butchers and to revoke their license for mal-conduct in the course of trade; and to regulate, license and restrain the sale of fresh meat and vegetables in the City; and to regulate or prohibit slaughter yards within the inhabited portions of the City.

Same. SEC. 7.—To require, and it is hereby made the duty of every able-bodied male resident of the City, over the age of twenty one and under the age of fifty years, to labor, not to exceed two days in each year upon the streets; but every person may, at his option, pay one dollar and fifty cents for the day he shall be so bound to labor: *Provided*, It be paid within ten days from the time he shall be notified by the Street Supervisor. In default of payment, as aforesaid, the same may be collected as other taxes.

Same. SEC. 8.—The City Council is further empowered to assess and collect and expend the necessary tax for furnishing the City with water for irrigating and other purposes, and regulate and control the water courses and mill-sites in said City, and the water courses leading thereto, in the immediate vicinity thereof; *Provided*, Such control does not interfere with or infringe upon rights of prior appropriations.

Same. SEC. 9.—To direct and regulate the planting and preserving of trees in the streets and public grounds, and regulate the fencing of lots within the boundaries of the City.

Mayor, powers and duties. SEC. 10.—The Mayor shall be chief executive officer of said Corporation. He shall preside in the City Council, and shall have power to veto any ordinances, but when passed by four fifths majority, after considering his objections, if he still declines to approve the ordinance, it shall go into effect without his approval, a statement to that effect being attached thereto: *Provided*, That in the absence of the Mayor, at any meeting of the Council, the Council shall have power to appoint one of their members to preside.

Approved February 22, 1878.

CHAPTER XVII.

OF COMPILED LAWS.

AN ACT to amend Section 1806, Section 1253 and Section 1750 of the Compiled Laws of Utah.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah :*—That Section 1806 of the Compiled Laws of Utah is hereby amended as follows: In the second line after the word "the," strike out "fees of the Justice," and insert the words "costs of the Justice's Court, including transcript," in lieu thereof. Section 1806 Compiled Laws amended.

SEC. 2.—That Section (1253) twelve hundred and fifty-three of the Compiled Laws of Utah is hereby amended by inserting after the word "found," in the third line of said Section, the words "or by any citizen of the United States over twenty-one years of age." Section 1253 Compiled Laws amended.

SEC. 3.—That Section 1750 of the Compiled Laws of the Territory of Utah is hereby amended by striking out the word "twenty-three," and inserting in lieu thereof, the word "twenty-two," so as to make Sections one hundred and twenty-two to one hundred and forty-four, both inclusive, of said Act, applicable to Justices' Courts and proceedings therein. Section 1750 amended.

Approved February 22, 1878.

CHAPTER XVIII.

OF INCORPORATING ASSOCIATIONS.

AN ACT supplemental to An Act providing for Incorporating Associations for Mining, Manufacturing, Commercial and other Industrial Pursuits, approved February 18th, 1870.

Religious and other associations may elect directors and become incorporate.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That any number of persons associated together for religious, social, scientific, benevolent or other purpose, included in Section one of said Act, (being of the Compiled Laws of Utah Section 529), when pecuniary profit is not their object, may, in accordance with the rules, regulations or discipline of such association or institution, elect directors, the number thereof to be not less than three nor more than thirteen, and may incorporate themselves as provided in this Act.

What steps necessary to incorporation.

SEC. 2.—Instead of the requirements provided for incorporating associations in Section two of the Act to which this is supplemental, pertaining to subscription of capital stock, or the payment thereof, it shall be sufficient for associations mentioned in the preceding Section, if the articles of agreement or incorporation set forth the holding of the election for Directors, the time and place where the same was held, that a majority of the members of such religious, social, scientific, or benevolent association, or branch thereof, were present at such election and signed the articles of agreement and the result thereof; to be verified by the officers conducting such election. Said Directors or other officers shall qualify and continue in office as provided in the articles of agreement or by-laws consistent with the Act to which this is supplemental.

Such corporation may own or hold real estate.

SEC. 3.—Such corporations may hold all the property of the association, or members thereof, owned prior to incorporation or acquired thereafter in any manner, and transact all business relative thereto; but no such corporation must own or hold

more real estate than may be necessary for the business and objects of the association. *Provided*, That incorporated associations of Masons, Odd Fellows, endowed institutions of learning, or other associations, under the provisions of this Act, may hold such real estate as may be necessary to carry out their charitable purposes, or for the establishment and endowment of institutions of learning connected therewith.

Directors must make annual report.

SEC. 4.—The Directors must annually make a full report of all property, real and personal, held in trust for their corporation by them, and of the condition thereof to the members of the association for which they are acting.

Corporations may mortgage or sell their real or personal property.

SEC. 5.—Corporations organized by members of associations mentioned in Section one of this Act, may, when necessary for their good, mortgage or sell their real or personal property: *Provided*, That such mortgage or sale must be authorized by a two-thirds' majority vote of its members present at a duly called meeting for that purpose. Such sale may be made by the Directors of such corporation and the proceeds thereof used as may be provided by the by-laws thereof.

Approved February 22, 1878.

CHAPTER XIX.

OF FISH.

AN ACT to repeal Section twenty-one hundred and ninety-six (2196) and Section twenty-one hundred and ninety-seven (2197) of the Compiled Laws of Utah, and Prescribing the Time and Mode of taking Fish out of the Public Waters.

Section 2196 Compiled Laws regarding catching fish, amended.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That Section twenty-one hundred and ninety six (2196) of the Compiled Laws of Utah is hereby repealed

and the following substituted therefor: (2196) Every person who at any time takes or catches any fish except with a hook and line, and with seine, except as is provided for in the next Section, shall be deemed guilty of a misdemeanor.

Section 2197 amended.

SEC. 2.—That Section 2197 of the Compiled Laws of Utah is hereby repealed and the following substituted therefor: Every person who takes, catches, or kills fish by the use of seines, gill or dip nets, baskets, traps, or any device whatever, except as provided in this Act, shall be deemed guilty of a misdemeanor: *Provided*, That seines not more than two hundred yards long and twelve feet wide, with meshes not less than two inches square for fifty yards in the center, and meshes not less than two and one-half inches square in the wings or ends thereof, may be used in Bear and Utah Lakes only, between the fifteenth day of September and the fifteenth day of March following, and that the use of minnow nets shall not be considered within the meaning of this Section.

Approved February 22, 1878.

CHAPTER XX.

CHANGING COUNTY SEAT.

AN ACT changing the County Seat of Piute County.

County seat of Piute County removed.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:—That the County Seat of Piute County, is hereby removed from Marysvale, in Piute County, to the town of Junction in said County, and that so much of Section one hundred and forty seven (147), of the Compiled Laws of Utah, as conflicts with this Act, is hereby repealed.

Approved February 22, 1878.

CHAPTER XXI.

OF TAXES ON TRANSITORY HERDS.

AN ACT providing for Equalizing Taxes on Transitory Herds of Stock in this Territory.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That where bands of horses and mules and herds of cattle or sheep are wintered in one County and taken into another County in this Territory to summer, the taxes on such stock shall be collected in the County where the assessment may be made, and the Collector of the County making the collection shall remit to the County Treasurer of the County where such stock is taken to be summered, one-half of the County taxes so collected, after deducting therefrom the percentage allowed in such County for assessing and collecting taxes.

Herds of horses and cattle wintered in one County and summered in another, taxes on, how appropriated.

SEC. 2.—This Act shall be in force from and after its passage.

Approved February 22, 1878.

CHAPTER XXII.

AMENDING THE COMPILED LAWS.

AN ACT amending Sections five hundred and five (505), five hundred and six (506), five hundred and seven (507), five hundred and eight (508), five hundred and thirteen (513), five hundred and twenty-two (522) and five hundred and twenty-six (526) of the Compiled Laws of Utah Territory, relating to Irrigation Districts.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That Section five hundred and five (505), of the Compiled

Irrigation.

Section 505, Compiled Laws, superseded.

laws of Utah is hereby repealed and the following substituted therefor: Upon the majority of the citizens of any County or part thereof, representing to the County Court that more water is necessary, and that there are streams or parts of streams unclaimed or unused, which, if brought out of their natural channels and thrown upon tracts of land under cultivation, or to be put under cultivation, can be of value to the interests of agriculture, the County Court having jurisdiction

County Court may, on vote of County, organize Irrigation District.

may proceed to organize the County, or part thereof, into an Irrigation District; and thereafter the landholders of such District shall be equally entitled to the use of the water in, or to be brought into, such District, according to their acknowledged rights: *Provided*, Such landholders pay their proportion of the expenses incurred in the construction and keeping in repair of the necessary canals, flumes, dams or ditches.

Section 506 superseded.

SEC. 2.—Section five hundred and six (506), is hereby repealed and the following substituted therefor: "The citizens of an Irrigation District, when so organized for the purposes provided in the preceding section, may, in mass meeting, proceed to the formation of a company, by electing, *viva voce*, not

Trustees of irrigation district, how elected.

less than three nor more than thirteen Trustees, a Secretary and a Treasurer. Notice of the time, place, and object of said mass meeting shall be given by the Clerk of the County Court, at least ten days previous, by advertising three times in some newspaper having general circulation in the County, and by posting up notices in three public places in the District.

Section 507 amended.

SEC. 3.—Section five hundred and seven (507), is hereby amended by striking out all after the words "construct the same," in the seventh line of said Section.

Section 508 superseded.

SEC. 4.—Section five hundred and eight (508) is hereby repealed and the following substituted therefor: "It shall then be the duty of the Trustees to make a report to the County Court of the location

Duty of Trustees of Irrigation District.

and estimate provided for in Section five hundred and seven (507); also to call a meeting of the holders of the lands to be benefitted by the proposed canal or ditch, at which a copy of said report shall be

presented, and the said landholders shall vote "Yes" or "No" upon the following questions: 1—Do you mutually agree to pay ——— per acre land tax to construct the proposed canal or ditch? 2—Do you approve the action of the mass meeting in the election of officers? Notice shall be given by the Trustees, at least ten days previous to the time appointed for such meeting, by advertising at least three times in some newspaper having general circulation in the County, and by posting up notices in three public places in the District. Said advertisement and notice shall state distinctly the time and place and object of such meeting, and be signed by a majority of the Trustees and the Secretary. The voting at said meeting shall be by ballot, and the Chairman and Secretary of said meeting shall be the Judge and Clerk of the election. A ballot box shall be provided by the Trustees, and each voter shall present his ballot to the Judge of election, who shall deposit it in the box, and the Clerk shall write the name of the voter in a poll list or book, which shall also be provided by the Trustees. No person shall be entitled to vote at said meeting or election unless he is a landholder in the District. Immediately after the close of the election, the ballots shall be openly counted by the Judge and Clerk, assisted by two persons chosen by the voters present. A certificate of the results of the election, signed by the persons who counted the votes, shall be forwarded at once to the Clerk of the County Court by the Judge of said election.

Elections in District.

SEC. 5.—Section five hundred and thirteen, (513), is hereby repealed and the following substituted therefor: All subsequent elections for company officers and for determining the rate of annual tax, shall be held annually on the second Monday in October, at such time and place as shall be designated by the Trustees, at which the number of Trustees may be changed, by a two-thirds' vote, to any number not less than three nor more than thirteen. Said election shall be conducted, and notice thereof given, and certificate thereof returned as provided for in Section four (4) of this Act. And the officers elected shall give bonds as is provided in Section five hundred and eleven of said Compiled

Section 513 superseded.

Elections continued.

Laws. The rate of tax determined at said election by a two-thirds' vote, shall be a law in said Irrigation District; *Provided*, Any landholder in said District who neglects or refuses to pay his proportion of the tax so determined, or to satisfactorily settle with the Trustees for the same, shall not be entitled to vote or to hold any office in said Irrigation Company, nor to the use of any of the water from the canals or ditches of said District.

Section 522 superseded.

SEC. 6.—Section five hundred and twenty-two (522), of said laws is hereby repealed and the following substituted therefor: In every case, where the owner of the land so required, shall absent himself from the County, or shall not, from any cause, be capable in law so to agree, or shall refuse to agree, or ask an exorbitant price, the value of such land and the damages to the owner thereof shall be ascertained in the following manner: 1—The owner of or claimant to such land and the Trustees may each select a referee, and in case of disagreement, they two may select a third, and these referees shall proceed to determine the value of the land under controversy and assess the amount of damages, if any, which each owner of lands or improvements has sustained, or will sustain, in consequence of the canal or ditch; 2—The appraisal, with a description of the land so appraised, shall be acknowledged, by the referees signing it, before the Clerk of the County Court of the County in which the lands are situated, and when so acknowledged it shall be filed in the said Clerk's office within ten days after it shall have been made. In case the occupant or claimant shall refuse or neglect to select a referee as herein provided, the Trustees may petition the District Court of the District in which the land is situated, for the appointment of three or more Commissioners to condemn the land and fix and determine the damages; said Commissioners to be appointed upon such notice to the complainant or occupant as said Court shall direct. Said Commissioners shall report to said Court their award, and determination, for approval or disapproval. The motion for approval of said award shall be heard on such notice as the Court shall direct.

Absent owner.

Referee to settle value of land and damages.

Commissioners to settle damages, etc., how and when appointed.

SEC. 7.—Section five hundred and twenty-six (526), is hereby repealed and the following substituted therefor: All Companies or Districts organized under the provisions of Sections five hundred and five (505) to five hundred and twenty-eight (528), inclusive, of the Compiled Laws of Utah, shall be liable for any damages which may occur by the breakage of any canal or ditch. When any land in an Irrigation District is benefitted or damaged by the Company's canals or ditches from soakage or other incidental cause, and the owner of said land and the Company cannot agree as to the amount of the benefit or damage, the matter in dispute, as well as the question of damage through breakage, may be referred and decided as provided in the preceding Section of this Act. No Irrigation Company organized under the laws of this Territory shall be entitled to divert the waters of any stream to the injury of any Irrigation Company or person holding a prior right to the use of said waters and all cases of dispute arising from such unlawful division, may also be referred and decided as provided in the preceding Section of this Act.

Section 526 superseded.

Liabilities for damages.

Damage and benefit, how settled.

SEC. 8.—Nothing in this Act shall be so construed as to prevent any association of persons incorporating themselves under "An Act providing for incorporating associations, for mining, manufacturing, commercial and other industrial pursuits," approved February eighteenth, eighteen hundred and seventy (1870), and all amendments thereto, or to affect any of their rights in such corporations.

The right of incorporation under Act of Feb. 18, 1870 and amendments not affected by this Act.

Approved February 22, 1878.

CHAPTER XXIII.

OF THE PRESERVATION OF GAME.

AN ACT amending certain Sections, herein named, for the Preservation of Game.

Section 2193, Compiled Laws, Superseded.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That Section 2193 of the Compiled Laws is hereby repealed and the following enacted in lieu thereof: Section (2193). Every person who, between the fifteenth day of March and the fifteenth day of August in each year, willfully takes, kills, destroys, or offers for sale, quail, partridges, or grouse, or who, between the fifteenth day of March and the fifteen [fifteenth] day of September in each year, willfully takes, kills, destroys, or offers for sale any kind of wild ducks, or who robs the nests of any such birds, or who kills any beaver or otter, between the first day of April and the first day of November, in each year, or who sells, or offers for sale, the skins of said animals, that have been killed within the above prohibited time, or who shall kill any imported quail or other imported birds, or their progeny, for five years next ensuing the passage of this Act, shall be deemed guilty of a misdemeanor.

Killing or offering for sale small game out of season.

Section 2194, Compiled Laws, superseded.

SEC. 2.—That Section 2194 is hereby repealed and the following enacted in lieu thereof: Section (2194). Every person who, between the first day of January and the first day of August, in each year, takes, kills, or destroys any elk, deer, mountain sheep or antelope, is guilty of a misdemeanor.

Killing large game out of season.

Fish and Game Commissioner may be appointed by County Court.

SEC. 3.—The County Courts of the respective Counties of this Territory may each appoint a Fish and Game Commissioner, whose duty it shall be to see to the enforcement of the laws for the protection of fish and game, and one-half of all fines collected for the violation of said laws shall be paid to said Commissioner, the other half shall be paid into the County Treasury for the use of district schools: and said Commissioner shall make an annual report to

Duty of Commissioner.

the County Court on or before the thirty-first day of December, in each year.

Approved February 22, 1878.

CHAPTER XXIV.

APPROPRIATION BILL.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:—That there be appropriated out of any moneys in the Territorial Treasury not otherwise appropriated, the following sums to the following named persons or accounts respectively:

To William Clayton, Recorder of Marks and Brands, for the purpose of printing marks and brands, for next two years, ...	$175 00
To House Committee on Elections, of the present session, to reimburse said Committee for amount paid for a copy of the election law of Pennsylvania,	5 00
To J. W. Fox, Territorial Surveyor General, for rent of office for two years, ending December 31, 1877, ...	240 00
To Joseph S. Giles, ex-Assessor and Collector of Millard County, for his relief, . .	22 48
To Mrs. M. H. Duncan, for the service of her husband, as Elisor of Second Judicial District, ...	95 00
To Wm. Howard, Assessor and Collector of Rich County, for his relief, ...	16 30
To Z. Snow, for legal services to officers of the Territory, ...	350 00
To Maria Smith, for her relief, to be paid to the Assessor and Collector of Salt Lake County, to pay her Territorial tax, ...	176 80
To Harvey H. Cluff, Assessor and Collector of Utah County, for delinquent Territorial taxes paid by him to the Territory, ...	79 60

To Deseret News Office for sundry items of printing during 1876 and 1877, . .	$ 72 50
To C. S. Hills, Clerk of Third District Court for services as Clerk in 1876, .	132 45
To Cache County, to reimburse said County for delinquent Territorial taxes paid to the Territory, to be paid to the Treasurer of said County, ...	45 38
To Charles W. Emerson, Clerk of First District Court, for services in 1876 and 1877, ...	257 95
To J. R. Wilkins, Clerk of Second District Court, for services in 1876 and 1877,	371 90
To C. S. Hill, Clerk of Third District Court, for services in 1877, ...	347 45
To H. G. Boyle, Chaplain, ...	240 00
To W. C. Dunbar, Public Printer, for printing for the Twenty-third Session, or so much thereof as may be necessary, .	1,431 00
To Auditor of Public Accounts, to pay the bill of the Sergeant-at-arms for supplies to the Legislative Assembly, present session, ...	428 20
To the Territorial Superintendent of District Schools, Salary at $1,500 per annum, for 1878 and 1879, ...	3,000 00
For expenses of printing and contingent expenses for School Superintendent's office for two years, half each year for 1878 and 1879, ...	500 00
To Martin Florida, for relief to cover expenses incurred in re-capturing Wm. Kelly, prisoner escaped, ...	499 75
To Wm. B. Preston, Chairman of enrolling Committee, to pay extra clerk hire, or so much thereof as may be necessary, ...	10 00
To pay Librarian's salary for 1878 and 1879, for two years ending December 31st, 1879, at $250 per year, . . .	500 00
To pay for moving books to the room lately provided for Library room, or so much thereof as may be necessary,	100 00
To pay rent of office for Auditor, Recorder of Marks and Brands, Treasurer, Ter-	

ritorial Surveyor General, and Library for two years ending first of March, 1880, ... $1,200 00

To pay salary of Auditor of Public Accounts for two years ending December 31st, 1879, $1,200 each year, . . . 2,400 00

To Territorial Treasurer's salary for two years ending December 31st, 1879, at $600 per year, ... 1,200 00

To pay deficiency of amounts due jurors and witnesses for 1876 and 1877, or so much thereof as may be necessary: *Provided*, That the Auditor shall not issue a warrant for any payment from this sum until he is satisfied that the amount claimed is justly due from, and ought to be paid by, this Territory, ... 18,000 00

To be drawn and expended by the County Court of Kane County, for widening dugways, removing rocks from the roads, and generally repairing and straightening the Territorial road from the head of the Black Ridge Dugway to the southern boundary of Kane County: *Provided*, Kane County will appropriate the sum of $750.00 for the same purpose, one-half of the entire sum to be drawn and expended in the year 1878, and one-half to be drawn and expended in the year 1879, . . 1,500 00

To be drawn and expended by the County Court of Washington County, in widening, straightening, removing rocks from, and generally repairing the Territorial road from the City of St. George to the north-eastern boundary of Washington County: *Provided*, Washington County will appropriate for the same purpose, the sum of $250, one-half of the entire sum to be drawn and expended in the year 1878, and one-half to be drawn and expended in the year 1879, ... 500 00

To be drawn and expended under the direction of the Chancellor of the University of Deseret, for general expenses of institution—$2,000 for each year, 1878 and 1879, ...	$4,000 00
For tuition, text books and incidental expenses of students in the normal department of said University, who may be selected pursuant to Section 608 of Compiled Laws of Utah, to be paid by the Auditor of Public Accounts, on orders signed by the several students respectively, and countersigned by the President of the Faculty of the University: *Provided*, Not more than twenty-five dollars shall be paid the students, respectively, for books and incidental expenses, and the regular rates of their tuition to the University for the years 1878 and 1879, . . .	5,200 00
To John B. Milner, Chairman of special committee on judicial expenses, to pay expenses of investigation, ...	37 00
To aid the Utah Silk Association in purchasing and putting in motion, machinery for manufacturing silk, . .	1,500 00
For relief of Wm. C. Mitchell, Assessor and Collector of Iron County, . . .	100 15
To be drawn by Commissioners to locate University lands, to defray expenses of completing their labors at an early day, or so much thereof as may be necessary, ...	500 00
To be drawn by Sergeant-at-arms of the Council, for payment of bills rendered for stamps, knives, wrappers and newspapers furnished the Council, . . .	236 11
For extra clerk hire for Council:	
To R. V. Morris, ...	25 00
To Joseph F. Simmons, ...	10 00
To C. S. Burton, ...	15 00
W. C. Morris, ...	12 00
To Heleman Pratt, Chaplain, ...	200 00
To Zebedee Coltrin, Chaplain, ...	40 00

To pay jurors' and witnesses' fees in the First District, each year for 1878 and 1879, $1,500.00; Second District, each year for 1878 and 1879, $1,500.00; Third District, each year for 1878 and 1879, $3,000.00, ... $12,000 00

Provided, That the Auditor shall not issue a warrant for any payment from this sum until he is satisfied that the amount claimed is justly due from, and ought to be paid by, this Territory. All fines and forfeitures collected in each Judicial District shall be paid into the Territorial Treasury, and the same is hereby appropriated for the payment of jurors and witnesses in the district in which the same were collected.

To Warren N. Dusenberry for legal services rendered, ... 350 00

For fuel, lights, stationery, postage, furniture and incidental expenses for the Auditor's, Treasurer's Brand Recorder's office and Library room, for the years 1878 and '79, $500.00 each year, 1,000.00

$59,122.02

Approved February 22, 1878.

CRIMINAL PROCEDURE.

AN ACT regulating the Mode of Procedure in Criminal Cases.

Preliminary Provisions.

Section 1. Enacting clause.
2. No person punishable but on legal conviction.
3. Public offenses, how prosecuted.
4. Criminal action defined.
5. Parties to a criminal action.
6. The party prosecuted known as defendant.
7. Rights of defendant in a criminal action.
8. Second prosecution for the same offense prohibited.
9. No person compelled to be a witness against himself in a criminal action or to be unnecessarily restrained.
10. No person to be convicted but upon verdict or judgment.

SEC. 1.—*Be it enacted by the Governor and the Legislative Assembly of the Territory of Utah*:—That, the mode of procedure in Criminal Cases in the Courts in this Territory shall be as prescribed in this Act.

No person punishable but on legal conviction

SEC. 2.—No person can be punished for a public offense, except upon a legal conviction in a Court having legal jurisdiction thereof.

Public offenses, how prosecuted.

SEC. 3.—Every public offense must be prosecuted by indictment, except: Offenses triable in Justices' and Police Courts.

Criminal action defined.

SEC. 4.—The proceeding by which a person charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

Parties to a criminal action.

SEC. 5.—A criminal action is prosecuted in the name of the people of the Territory of Utah, as a party, against the person charged with the offense.

Party prosecuted known as defendant.

SEC. 6.—The party prosecuted in a criminal action is designated in this Code as the defendant.

SEC. 7.—In a criminal action the defendant is entitled:

1—To a speedy and public trial;

Rights of defendant in a criminal action.

2—To be allowed counsel as in civil actions, or to appear and defend in person or with counsel;

3—To produce witnesses on his behalf, and to be confronted with the witnesses against him, in the presence of the Court, except that where the charge has been preliminarily examined before a committing Magistrate and the testimony taken down by question and answer in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness; or where the testimony of a witness on the the part of the people, who is unable to give security for his appearance, has been taken conditionally in the like manner in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness, the deposition of such witness may be read, upon its being satisfactorily shown to the Court that he is dead or insane, or cannot, with due diligence, be found within the Territory.

Second prosecution for the same offense prohibited.

SEC. 8.—No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted.

No person compelled to be a witness against himself in a criminal action or to be unnecessarily restrained.

SEC. 9.—No person can be compelled, in a criminal action, to be a witness against himself; nor can a person charged with a public offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

No person to be convicted but upon a verdict or judgment.

SEC. 10.—No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the Court, or upon a plea of guilty, or upon judgment against him upon a demurrer to the indictment or misdemeanor upon a judgment of a Police or Justices' Court, a jury having been waived.

TITLE I.

Of the Prevention of Public Offenses.

CHAPTER I. *Of Lawful Resistance.*
II. *Of the intervention of the Officers of Justice.*
III. *Security to keep the peace.*
IV. *Police in Cities and Counties and their attendance at exposed places.*
V. *Suppression of Riots.*

CHAPTER I.

OF LAWFUL RESISTANCE.

Section 11. Lawful resistance, by whom made.
12. By the party, and to what extent.
13. By other parties, in what cases.

Lawful resistance, by whom made.

SEC. 11.—Lawful resistance to the commission of a public offense may be made:

1—By the party about to be injured;

2—By other parties.

By the party, and to what extent.

SEC. 12.—Resistance sufficient to prevent the offense may be made by the party about to be injured:

1—To prevent an offense against his person, or his family, or some member thereof;

2—To prevent an illegal attempt by force to take or injure property in his lawful possession.

By other parties, in what cases.

SEC. 13.—Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

CHAPTER II.

OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

Section 14. Intervention of officers, in what cases.
15. Persons acting in their aid justified.

Intervention of officers, in what cases.

SEC. 14.—Public offenses may be prevented by the intervention of the officers of justice:

1—By requiring security to keep the peace;

2—By forming a police in cities or counties and by requiring their attendance in exposed places;

3—By suppressing riots.

Persons acting in aid of officers justified.

SEC. 15.—When the officers of justice are authorized to act in the prevention of public offenses, other persons, who, by their command, act in their aid, are justified in so doing.

CHAPTER III.

SECURITY TO KEEP THE PEACE.

Section 16. Information of threatened offense.
17. Examination of complainant and witnesses.
18. Warrant of arrest.
19. Proceedings on charges being controverted.
20. Person complained of, when to be discharged.
21. Security to keep the peace, when required.
22. Effect of giving or refusing to give security.
23. Person committed for not giving security, how discharged.
24. Undertaking to be filed in Clerk's office.
25. Security, when required for assault committed in the presence of a Court or Magistrate.
26. Undertaking, when broken.
27. Undertaking, when and how to be prosecuted.
28. Evidence of breach.
29. Security for the peace not required, except in accordance with this Chapter.

Information of threatened offense.

SEC. 16.—An information may be laid before any of the Magistrates mentioned in Section 56, that a person has threatened to commit an offense against the person or property of another.

Examination of complainant and witnesses.

SEC. 17.—When the information is laid before such Magistrate, he must examine, on oath, the informer, and any witnesses he may produce, and must take their depositions in writing, and cause them to be subscribed by the parties making them.

Warrant of arrest.

SEC. 18.—If it appears from the depositions that there is just reason to fear the commission of the offense threatened, by the person so informed against, the Magistrate may issue a warrant, directed generally to the Sheriff of the county, or any Constable, Marshal, or Policeman in the Territory, reciting the substance of the information, and commanding the officer forthwith to arrest the person informed of and bring him before the Magistrate.

Proceedings on charges being controverted.

SEC. 19.—When the person informed against is brought before the Magistrate, if the charge be controverted, the Magistrate must take testimony in relation thereto. The evidence must be reduced to writing and subscribed by the witness.

Persons complained of to be discharged, when.

SEC. 20.—If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

Security to keep the peace, when required.

SEC. 21.—If, however, there is just reason to fear the commisson of the offense, the person complained of may be required to enter into an undertaking in such sum, not exceeding three thousand dollars, as the Magistrate may direct, with one or more sufficient sureties, to keep the peace towards the people of this Territory, and particularly towards the informer. The undertaking is valid and binding for six months, and may, upon the renewal of the information, be extended for a longer period, or a new undertaking may be required.

Effect of giving or refusing to give security.

SEC. 22.—If the undertaking required by the last section is given, the party informed of must be discharged. If he does not give it, the Magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

Person committed for not giving security, how discharged

SEC. 23.—If the person complained of is committed for not giving the undertaking required, he may be discharged by any Magistrate, upon giving the same.

Undertaking to be filed in Clerk's office.

SEC. 24.—The undertaking must be filed by the Magistrate in the office of the Clerk of the County Court.

Security, when required for assault or threat in the presence of a Court or Magistrate.

SEC. 25.—A person who, in the presence of a Court or Magistrate, assaults or threatens to assault another, or to commit an offense against his person or property, or who contends with another with angry words, may be ordered by the Court or Magistrate to give security, as in this Chapter provided, and if he refuse to do so, may be committed as provided in Section 22.

Undertaking, when broken.

SEC. 26.—Upon the conviction of the person informed against of a breach of the peace, the undertaking is broken.

Undertaking, when and how to be prosecuted

SEC. 27.—Upon the Prosecuting Attorney's producing evidence of such conviction to the Court having jurisdiction, the Court must order the undertaking to be prosecuted, and the Prosecuting Attorney must thereupon commence an action upon it in the name of the people of this Territory.

Evidence of breach.

SEC. 28.—In the action the offense stated in the record of conviction must be alleged as a breach of the undertaking, and such record is conclusive evidence of the breach.

Security to keep the peace not required except in accordance with this Chapter.

SEC. 29.—Security to keep the peace, or be of good behavior cannot be required except as prescribed in this Chapter.

CHAPTER IV.

POLICE IN CITIES AND COUNTIES, AND THEIR ATTENDANCE AT EXPOSED PLACES.

Section 30. Organization and regulation of the police.
31. Force to preserve the peace at public meetings, when and how ordered.

Organization and regulation of the police.

SEC. 30.—The organization and regulatian of the police, in the cities and counties of this Territory, is governed by special laws.

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Force to preserve the peace at public meetings, when and how ordered.

SEC. 31.—The Mayor or other officer having the direction of the police of a city or county must order a force sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended.

CHAPTER V.

SUPPRESSION OF RIOTS.

Section 32. Power of Sheriff or other officer in overcoming resistance to process.
33. The officer to certify to Court the names of persons resisting, etc.
34. When Governor to order out a military force to aid in executing process.
35. Magistrates and officers to command rioters to disperse.
36. To arrest rioters if they do not disperse.

Power of Sheriff or other officer in overcoming resistance to process.

SEC. 32.—When a Sheriff or other public officer authorized to execute process, finds, or has reason to apprehend that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the persons resisting, their aiders and abettors.

The officer to certify to the Court the names of the persons resisting.

SEC. 33.—The officer must certify to the Court from which the process issued the names of the persons resisting, and their aiders and abettors, to the end that they may be proceeded against for their contempt of Court.

When Governor to order out a military force to aid in executing process.

SEC. 34.—If it appears to the Governor that the civil power of any county is not sufficient to enable the Sheriff to execute process delivered to him, he must, upon the application of the Sheriff of the county, order such portion as shall be sufficient, or the whole, if necessary, of the organized militia, to proceed to the assistance of the Sheriff.

Magistrates and officers to command rioters to disperse.

SEC. 35.—When any number of persons, whether armed or not, are unlawfully or riotously assembled, the Sheriff of the county and his deputies, the officials governing the precinct or city, or the Justices of the Peace and Constables thereof, or any of them,

must go among the persons assembled, or as near to them as he safely can, and command them, in the name of the people of the Territory, immediately to disperse.

SEC. 36.—If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county. To arrest rioters if they do not disperse.

TITLE II.

Of the Proceedings in Criminal Actions Prosecuted by Indictment, to the Commitment, inclusive.

CHAPTER I. *Of the local jurisdiction of public offenses.*
II. *Of the time of commencing criminal actions.*
III. *The information.*
IV. *The warrant of arrest.*
V. *Arrest, by whom and how made.*
VI. *Retaking after an escape or rescue.*
VII. *Examination of the case and discharge of the defendant or holding him to answer.*

CHAPTER I.

OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

37. Jurisdiction of offenses.
38. Jurisdiction of an indictment for murder, etc., where injury was inflicted in one county and the party dies out of the county.
39. Of an indictment against an accessory.
40. Jurisdiction in cases of principals who are not present, etc., at commission of the principal offense.
41. Conviction or acquittal in another State or Territory a bar when the jurisdiction is concurrent.

42. Conviction or acquittal in another county or district a bar when jurisdiction is concurrent.
43. Jurisdiction of an offense on board a vessel.
44. Of indictment for kidnapping, enticing away a child, or abduction.
45. When property is feloniously taken in one county and brought into another.
46. Jurisdiction of an indictment for escaping from prison.
47. Jurisdiction of an indictment for stealing, etc., property out of this Territory and briging it therein.

Jurisdiction of offenses.

SEC. 37.—Every person is liable to punishment, by the laws of this Territory, for public offenses by him committed therein. When the commission of a public offense, commenced without the Territory, is consummated within its boundaries, the defendant is liable to punishment therefor in this Territory, though he was out of the Territory at the time of the commission of the offense charged. If he consummated it in this Territory, through the intervention of an innocent or guilty agent, or any other means proceeding directly from himself, in such case the jurisdiction is in the county in which the offense is consummated. When an indictable public offense is committed in part in one judicial district, and in part in another, or the acts or effects thereof, constituting or requires it to the consummation of the offense, occur in two or more judicial districts, the jurisdiction is in either. When a public offense, of which Magistrates have jurisdistion, is committed near the boundaries of two or more counties, the jurisdiction is in either.

Jurisdiction of an indictment for murder, etc., where injury was inflicted in one county and the party dies out of the county.

SEC. 38.—The jurisdiction of an indictment for murder or manslaughter, when the injury which cause [caused] the death was inflicted in one district and the party injured dies in another, or out of the Territory, is in the district where the injury was inflicted.

Of an indictment against an accessory.

SEC. 39.—In the case of an accessory in the commission of a public offense, the jurisdiction is in the district or county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county or district.

SEC. 40.—The jurisdiction of an indictment against a principal in the commission of a public

offense, when such principal is not present at the commission of the principal offense, is in the same county or district it would be under this Code if he were so present and aiding and abetting therein.

Jurisdiction in cases of principals who are not present, etc., at commission of the principal offense.

SEC. 41.—When an act charged as a public offense is within the jurisdiction of a State or Territory, as well as of this Territory, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this Territory.

Conviction or acquittal in another State a bar when the jurisdiction is concurrent.

SEC. 42.—When an offense is within the jurisdiction of two or more districts or counties, a conviction or acquittal thereof in one county or district is a bar to a prosecution or indictment therefor in another.

Conviction or acquittal in another county or district a bar when jurisdiction is concurrent.

SEC. 43.—When an offense is committed in this Territory, on board a vessel navigating a river, bay, slough, canal or lake, or lying therein in the prosecution of her voyage, the jurisdiction is in any county or district through which the vessel is navigated in the course of her voyage, or in the county or district where the voyage terminates.

Jurisdiction of an offense on board a vessel.

SEC. 44.—The jurisdiction of an indictment:

1—For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping him with intent, against his will, to cause him to be secretly confined or imprisoned in this Territory, or to be sent out of the Territory, or from one county to another; or,

Of indictment for kidnapping, enticing away a child, or abduction.

2—For decoying, taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having lawful charge of the child; or,

3—For inveigling, enticing, or taking away any female of previous chaste character, for the purpose of prostitution; or,

4—For taking away any female under the age of eighteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution;—

Is in the district in which the offense is committed, or out of which the person upon whom the offense was committed may, in the commission of the offense, have been brought, or in which an act was

done by the defendant in instigating, procuring, promoting or aiding in the commission of the offense, or in abetting the parties concerned therein.

When property is feloniously taken in one county and brought into another.

SEC. 45.—When property taken in one district or county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offense is in either. But if at any time before the conviction of the defendant in the latter, he is indicted in the former, the Sheriff of the latter county must, upon demand, deliver him to the Sheriff of the former.

Jurisdiction of an indictment for escaping from prison.

SEC. 46.—The jurisdiction of an indictment for escaping from prison is in any county or district of the Territory.

Jurisdiction of an indictment for stealing, etc., property out of this Territory and bringing it therein.

SEC. 47.—The jurisdiction of an indictment for stealing in any other Territory or State the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this Territory, is in any county or district into or through which such stolen property has been brought.

CHAPTER II.

OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

Section 48. No person shall be tried, etc., unless within the time set forth in this Chapter.
49. Prosecution for murder may be commenced at any time.
50. Limitation of four years in all other felonies.
51. Limitation of three years in misdemeanors.
52. Exception when defendant is out of the Territory.
53. Indictment found, when presented and filed.
54. Complaint for misdemeanor before Justice of the Peace or Police Court must be commenced within two years.
55. Action or complaint commenced when complaint is filed.

No person to be tried, etc., unless within the time set forth in this Chapter.

SEC. 48.—No person shall be tried, convicted, or punished for any act or omission committed or omitted in this Territory, unless the indictment shall be found or the complaint shall filed within the time set forth in this Chapter, after the commission or omission of the act charged.

Prosecution for murder may be be commenced at any time.

SEC. 49.—There is no limitation of time within which a prosecution for murder may be commenced. It may be commenced at any time after the death of the person killed.

Limitation of four years in all other felonies.

SEC. 50.—An indictment for any other felony than murder must be found within four years after its commission.

Limitation of three years in misdemeanors.

SEC. 51.—An indictment for any misdemeanor must be found within three years after its commission.

Exceptionwhen defendant is out of the Territory.

SEC. 52.—If, when the offense is committed, the defendant be out of the Territory, the indictment may be found within the term herein limited after his coming within the Territory, and no time during which the defendant is not an inhabitant of, or usually resident within the Territory, is part of the limitation.

Indictment found, when presented and filed.

SEC. 53.—An indictment is found, within the meaning of this Chapter, when it is presented by the Grand Jury in open Court and there received and filed.

Complaint for misdemeanor before Justice, etc., must be commenced in two years.

SEC. 54.—A complaint for a misdemeanor, of which Justices of the Peace and Police Courts have jurisdiction, must be commenced within two years after the commission of the offense.

Action on complaint commenced when complaint is filed.

SEC. 55.—An action on a complaint is commenced, when a verified complaint is filed by the Magistrate.

CHAPTER III.

THE INFORMATION.

Section 56. Who are Magistrates.

Who are Magistrates.

SEC. 56.—The following persons are Magistrates:

1—The District Judges;

2—Justices of the Peace;

3—Police Magistrates in incorporated cities, such as Mayors and Aldermen.

CHAPTER IV.

THE WARRANT OF ARREST.

Section 57. Examination of the prosecutor and his witnesses upon the information.
58. The deposition, what to contain.
59. When warrant may issue.
60. Form of warrant.
61. Name or description of the defendant in the warrant, and statement of the offense.
62. Warrant, to whom directed and by whom executed.
63. Defendant arrested for felony to be taken before Magistrate issuing the warrant, etc.
54. Defendant arrested for misdemeanor in another county to be admitted to bail.
65. Proceedings on taking bail from the defendant.
66. When bail is not given. When Magistrate who issued the warrant cannot act.
67. No delay in taking defendant before Magistrate.
68. Proceedings when defendant is taken before another Magistrate.
69. Proceedings for offenses triable in another county.
70. Duty of officer.
71. Admisson to bail. Proceedings when Magistrate has jurisdiction of the offense.

Examination of the prosecutor and his witnesses upon the information.

SEC. 57.—When an information is laid before a Magistrate of the commission of a public offense, triable within the county, he must examine on oath the informant or prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

The deposition, what to contain.

SEC. 58.—The deposition must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offense and the guilt of the defendant.

When warrant may issue.

SEC. 59.—If the Magistrate is satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he must issue a warrant of arrest.

Form of warrant.

SEC. 60.—A warrant of arrest is an order in writing, in the name of the people, signed by a Magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

County of———

The people of the Territory of Utah to any Sheriff, Constable, Marshal, or Policeman of said

Territory, or of the County of———: Information on oath having been this day laid before me, by A. B., that the crime of———(designating it), has been committed, and accusing C. D. thereof, you are therefore commanded forthwith to arrest the above named C. D. and bring him before me at (naming the place), or in case of my absence or inability to act, before the nearest or most accessible Magistrate in this County. Dated at——this——day of——, eighteen——.

———————

Justice of the Peace.

When necessary, the Magistrate may insert therein a clause to the effect that if the accused has fled from justice, that the peace officer pursue him into any other county of this Territory and there arrest him.

Name or description of the defendant in the warrant and statement of the defense.

SEC. 61.—The warrant must specify the name of the defendant, or, if it is unknown to the Magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city or precinct where it is issued, and be signed by the Magistrate, with his name of office.

Warrant, to whom directed and by whom executed.

SEC. 62.—The warrant must be directed to and executed by a peace officer; and in an incorporated city may be served by any peace officer, either in the county where issued or in any other county of the Territory.

Defendant arrested for felony to be taken before Magistrate issuing warrant etc.

SEC. 63.—If the offense charged is a felony, the officer making the arrest must take the defendant before the Magistrate who issued the warrant, or some other Magistrate of the same county, as provided in Section 66.

Defendant arrested for misdemeanor in another county to be admitted to bail.

SEC. 64.—If the offense charged is an indictable misdemeanor, and the defendant is arrested in another county, the officer must, upon being required by the defendant, take him before a Magistrate in that county, who must admit the defendant to bail and take bail from him accordingly.

Proceedings on taking bail from the defendant.

SEC. 65.—On taking the bail, the Magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must,

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without delay, deliver the warrant and undertaking to the Clerk of the Court at which the defendant is required to appear. If the offense charged be not an indictable misdemeanor, and the defendant be arrested in another county, the officer must, upon being required so to do by the defendant, take him before the most convenient magistrate in that or any adjoining county, who must admit the defendant to bail, and take bail for him accordingly, naming therein a time not exceeding twenty days, nor less than one day for each twenty miles from the place of taking it to the place of the Magistrate's office who issued the warrant, for the defendant to appear. On taking the bail, the Magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having the defendant in charge. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the Magistrate before whom the defendant is required to appear.

When bail is not given. When Magistrate who issued warrant cannot act.

SEC. 66.—If, on the admission of the defendant to bail, the bail is not forthwith given, the officer must take the defendant before the Magistrate who issued the warrant, or, in case of his absence or inability to act, before the nearest or most accessible Magistrate in the same county, and must, at the same time, deliver to the Magistrate the warrant, with his return thereon indorsed and subscribed by him.

No delay in taking defendant before Magistrate.

SEC. 67.—The defendant must in all cases be taken before the Magistrate without unnecessary delay.

Proceedings when defendant is taken before another Magistrate.

SEC. 68.—If the defendant is brought before a Magistrate other than the one who issued the warrant, the depositions on which the warrant was granted must be sent to that Magistrate, or, if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

Proceedings for offenses triable in another county.

SEC. 69.—When an information is laid before a Magistrate of the commission of a public offense triable in another county of the Territory, but showing that the defendant is in the county where the information is laid, the same proceedings must be

had as prescribed in this Chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible Magistrate of the county in which the offense is triable, and the depositions of the informant or prosecutor, and of the witnesses who may have been produced, must be delivered by the Magistrate to the officer to whom the warrant is delivered.

Duty of officer.

SEC. 70.—The officer who executes the warrant must take the defendant before the nearest or most accessible Magistrate of the county in which the offense is triable, and must deliver to him the depositions and the warrant, with his return endorsed thereon, and the Magistrate must then proceed in same manner as upon a warrant issued by himself.

Admission to bail.

SEC. 71.—If the offense charged in the warrant issued pursuant to Section 69 is a misdemeanor, the officer must, upon being required by the defendant, take him before a magistrate of the county in which the warrant was issued, who, unless he have jurisdiction, must admit the defendant to bail, and immediately transmit the warrant, depositions and undertaking, to the Clerk of the Court in which the defendant is required to appear. If the Magistrate have jurisdiction of the offense, he must proceed as provided for in "An Act to extend the jurisdiction of Justices of the Peace in criminal cases, and to regulate the mode of procedure therein," approved February, 1876.

Proceedings when Magistrate has jurisdiction of the offense.

CHAPTER V.

ARREST, BY WHOM AND HOW MADE.

Section 72. Arrest defined. By whom made.
73. Arrest, how made. What restraint allowed.
74. Arrest by peace officer.
75. Arrest by private person.
76. Magistrates may orally order arrest.
77. Persons making arrest may summon assistance.
78. When the arrest may be made.
79. Arrest, how made.
80. Warrant must be shown.
81. When force may be used and what amount.

Section 82. Doors and windows may be broken, when.
83. Same.
84. Weapons may be taken from persons arrested.
85. Duty of private person who has made an arrest.
86. Duty of officer arresting with warrant.
87. Person arrested without a warrant to be taken before a Magistrate. Information to be filed.
88. Arrest by telegraph.
89. Same.

Arrest defined. By whom made.

SEC. 72.—An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

Arrest, how made. What restraint allowed.

SEC. 73.—An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention.

Arrest by peace officer.

SEC. 74.—A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person:

1—For a public offense committed or attempted in his presence;

2—When a person arrested has committed a felony, although not in his presence;

3—When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it;

4—On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested;

5—At night, when there is reasonable cause to believe that he has committed a felony.

SEC. 75.—A private person may arrest another:

Arrest by private person.

1—For a public offense committed or attempted in his presence;

2—When the person arrested has committed a felony, although not in his presence;

3—When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Magistrates may orally order arrest.

SEC. 76.—A Magistrate may orally order a peace officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such Magistrate.

Persons making an arrest may summon assistance.

SEC. 77.—Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

When the arrest may be made.

SEC. 78.—If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the Magistrate, indorsed upon the warrant, or unless the offense is committed in the presence of the person making the arrest.

Arrest, how made.

SEC. 79.—The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or is pursued immediately after its commission, or after an escape.

Warrant must be shown.

SEC. 80.—If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required.

When force may be used and what amount.

SEC. 81.—When the arrest is being made by an officer under the authority of a warrant, after information of the the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

Doors and windows may be broken, when.

SEC. 82.—To make an arrest, if the offense is a felony, a private person, if any public offense, a peace officer, may break open the door or window in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired.

Same.

SEC. 83.—Any person who has lawfully entered a house for the purpose of making an arrest, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

Weapons may be taken from persons arrested.

SEC. 84.—Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the Magistrate before whom he is taken.

Duty of private person who has made an arrest.

SEC. 85.—A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a Magistrate, or deliver him to a peace officer.

Duty of officer arresting with warrant.

SEC. 86.—An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law.

Person arrested without a warrant to be taken before a Magistrate. Information to be filed.

SEC. 87.—When an arrest is made without a warrant by a peace officer or private person, the person arrested must, without unnecessary delay, be taken before the nearest or most accessible Magistrate in the county in which the arrest is made, and an information, stating the charge against the person, must be laid before such Magistrate.

Arrest by telegraph.

SEC. 88.—Any Magistrate may, by an indorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of such warrant may be sent by telegraph to one or more peace officers, and such copy is as effectual in the hands of any officer, and he must proceed in the same manner under it as though he held an original warrant issued by the Magistrate making the indorsement.

Same.

SEC. 89.—Every officer causing telegraphic copies of warrants to be sent, must certify as correct, and file in the telegraphic office from which such copies are sent, a copy of the warrant and indorsement thereon, and must return the original with a statement of his action thereunder.

CHAPTER VI.

RETAKING AFTER AN ESCAPE OR RESCUE.

Section 90. May be at any time or in any place in the Territory.
91. May break open door or window if admittance is refused.

May be at any time or in any place in the Territory.

SEC. 90.—If a person arrested escape or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the Territory.

SEC. 91.—To retake the person escaping or rescued, the person pursuing may break open an outer or inner door or window of a dwelling house or other building, if, after notice of his intention, he is refused admittance.

May break open door or window if admittance is refused.

CHAPTER VII.

EXAMINATION OF THE CASE AND DISCHARGE OF THE DEFENDANT, OR HOLDING HIM TO ANSWER.

Section 92. Magistrate to inform defendant of the charge and of his right to have counsel.
93. Time to send and sending for counsel.
94. Examination, when to proceed.
95. When to be completed. Postponement.
96. On postponement defendant to be committed or discharged on bail.
97. The commitment, form of.
98. Depositions to be read on examination and subpœnas issued.
99. Examination of witnesses to be in presence of defendant, etc.
100. Examination of Defendant's witnesses.
101. Exclusion and separation of witnesses.
102. Who are entitled to be present at the examination.
103. Testimony, how taken and authenticated.
104. Depositions, by whom and how kept.
105. Defendant, when and how discharged.
106. When and how to be committed.
107. When offense is not bailable, order for commitment.
108. When offense is bailable, certificate of bail being taken.
109. Order for bail on commitment.
110. Commitment, how made and to whom delivered.
111. Commitment, form of.
112. Undertaking may be required of witness to appear.
113. For the appearance of witnesses, when and how required.
114. Witness refusing to give security for his appearance to be committed.
115. Witness unable to give security may be conditionally examined.
116. Magistrate to return depositions, etc., without delay, to the Court.

SEC. 92.—When the defendant is brought before the Magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the Magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings.

Magistrate to inform defendant of the charge and of his right to have counsel.

SEC. 93.—He must also allow the defendant a reasonable time to send for counsel, and postpone

Time to send and sending for counsel.

the examination for that purpose, and must, upon the request of the defendant, require a peace officer to take a message to any counsel in the precinct or the city the defendant may name. The officer must, without delay and without fee, perform that duty.

Examination, when to proceed.

SEC. 94.—If the defendant requires the aid of counsel, the Magistrate must, immediately after the appearance of counsel, or if, after waiting a reasonable time therefor, none appears, proceed to examine the case.

When to be completed. Postponement.

SEC. 95.—The examination must be completed at one session, unless the Magistrate, for good cause shown by affidavit, postpone it. The postponement cannot be for more than four days at each time, nor more than twelve days in all, unless by consent or on motion of the defendant.

On postponement, defendant to be committed or discharged on bail.

SEC. 96.—If a postponement is had, the Magistrate must commit the defendant for examination, admit him to bail or discharge him from custody, upon the deposit of money as provided in this Act as security for his appearance at the time to which the examination is postponed.

The commitment, form of.

SEC. 97.—The commitment for examination is made by an indorsement, signed by the Magistrate on the warrant of arrest, to the following effect: "The within named A. B. having been brought before me under this warrant, is committed for examination to the Sheriff of———." If the Sheriff is not present, the defendant may be committed to the custody of any peace officer.

Depositions to be read on examination and subpœnas issued.

SEC. 98.—At the examination the Magistrate must first read to the defendant the depositions of the witnesses examined on taking the information. He must also issue subpœnas, subscribed by him, for witnesses within the Territory, required either by the prosecution or the defense.

Examination of witnesses to be in presence of defendant, etc.

SEC. 99.—The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf.

Examination of defendant's witnesses.

SEC. 100.—When the examination of witnesses on the part of the people is closed, any witness the defendant may produce must be sworn and examined.

SEC. 101.—While a witness is under examination, the Magistrate may exclude all witnesses who

have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

Exclusion and separation of witnesses.

SEC. 102.—The Magistrate must also, upon the request of the defendant, exclude from the examination every person except his Clerk, the prosecutor and his counsel, the Attorney General, the Prosecuting Attorney of the county, or the District Attorney of the United States, the defendant and his counsel, and the officer having the defendant in custody.

Who are entitled to be present at the examination.

SEC. 103.—The testimony given by each witness must be reduced to writing, as a deposition, by the Magistrate, or under his direction, and authenticated, in the following form:

Testimony, how taken and authenticated.

1—It must state the name of the witness, his place of residence, and his business or profession;

2—It must contain the questions put to the witness and his answers thereto, each answer being directly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth;

3—If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated;

4—The deposition must be signed by the witness, or if he refused to sign it, his reason for refusing must be stated in writing as he gives it;

5—It must be signed and certified by the Magistrate.

Depositions, by whom and how kept.

SEC. 104.—The Magistrate or his Clerk must keep the depositions taken on the information or on the examination, until they are returned to the proper court; and must not permit them to be examined or copied by any person except a Judge of a Court having jurisdiction of the offense, or authorized to issue writs of *habeas corpus*, the Attorney General, District Attorney, or other prosecuting attorney, and the defendant and his counsel.

Defendant, when and how discharged.

SEC. 105.—If, after hearing the proofs, it appears that either no public offense has been committed, or that there is not sufficient cause to believe the de-

fendant guilty of a public offense, the Magistrate must order the defendant to be discharged, by an indorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

When and how to be committed

SEC. 106.—If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the Magistrate must indorse on the depositions an order, signed by him, to the following effect: "It appearing to me that the offense in the within depositions mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer to the same."

When offense is not bailable, order for commitment.

SEC. 107.—If the offense is not bailable, the following words must be added to the indorsement: "And he is hereby committed to the Sheriff of the County of———."

When offense is bailable, certificate of bail being taken.

SEC. 108.—If the offense is bailable, and bail is taken by the Magistrate, the following words must be added to the indorsement: "And I have admitted him to bail on the undertaking hereto annexed."

Order for bail on commitment.

SEC. 109.—If the offense is bailable and the defendant is admitted to bail, but bail has not been taken, the following words must be added to the order indorsed on the deposition: "And that he is admitted to bail in the sum of———dollars, and is committed to the Sheriff of the County of——— until he gives such bail or is legally discharged."

Commitment, how made out and to whom delivered.

SEC. 110.—If the Magistrate ordered the defendant to be committed, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or, if that officer is not present, to a peace officer, who must deliver the defendant into the proper custody, together with the commitment.

SEC. 111.—The commitment must be to the following effect:

County of———: (as the case may be.)

Commitment, form of.

The people of the Territory of Utah to the Sheriff of the County of———: An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be the time when, and the place where, the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged. Dated this——day of——eighteen——.

Undertaking may be required of witnesses to appear.

SEC. 112.—On holding the defendant to answer, the Magistrate may take from each of the material witnesses examined before him on the part of the people a written undertaking, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of two hundred dollars.

Security for the appearance of witnesses, when and how required.

SEC. 113.—When the Magistrate or a Judge of the Court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding Section.

Witness refusing to give security for his appearance to be committed.

SEC. 114.—If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance, with the order for that purpose, the Magistrate must commit him to prison until he complies or is legally discharged.

Witness unable to give security may be conditionally examined.

SEC. 115.—When, however, it satisfactorily appears, by examination on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people; such examination must be by question and answer, and conducted in the same manner as the examination before a committing Magistrate is required by this Act to be conducted, and the witness thereupon be discharged; but this Section does not apply to the prosecutor or to an accomplice in the commission of the offense charged.

SEC. 116.—When a Magistrate has discharged a defendant, or has held him to answer, he must re-

Magistrate to return depositions, etc., without delay to the Court.

turn, without delay, to the Clerk of the Court at which the defendant is required to appear, the warrant, if any, the depositions, and all undertakings of bail, or for the appearance of witnesses taken by him.

TITLE III.

Of Proceedings after Commitment and before Indictment.

CHAPTER I. *Preliminary Provisions.*
II. *Powers and Duties of a Grand Jury.*

CHAPTER I.

PRELIMINARY PROVISIONS.

Section 117. Public offenses triable in the District Courts to be prosecuted by indictment.
118. Who may challenge the panel or an individual Juror.
119. Cause of challenge to a panel.
120. Cause of challenge to an individual Grand Juror.
121. Manner of taking and trying challenges.
122. Dicision upon challenges.
123. Effect of allowing a challenge to a panel.
124. Effect of allowing a challenge to an individual Juror.
125. Objection to Jury can only be taken by challenge.
126. Appointment of a Foreman.
127. Oath of Foreman.
128. Oath of other Grand Jurors.
129. Grand Jury to be charged by the Court.
130. Retirement of the Grand Jury. Discharge of.

Public offenses triable in the District Courts to be prosecuted by indictment.

SEC. 117.—All public offenses triable in the District Courts, must be prosecuted by indictment.

A Grand Jury must consist of fifteen eligible male citizens of the United States, selected, summoned and impanneled, as provided by law, twelve of whom may constitute a quorum to do business.

Every male citizen of the United States is an eligible juror, who is

Qualifications of Jurors.

1—Over the age of twenty-one years; and

2—Who can read and write the English language; and

3—Who resides in and has resided in the judicial district in which he is called upon to serve six months next preceding the time he is selected by the Probate Judge and Clerk of the District Court, to serve as a Juror, as provided by law; and

4—Who is a taxpayer in this Territory; and

5—Who is of a reputed sound mind and discretion and who is not so disabled in body as to be unable to serve; and

6—Who has not been convicted of a felony; and

7—Who is not an officer or soldier of the United States or a person subject to their military control, unless his home and place of residence was in this Territory at the time of engaging in such service, or who has not served on grand or petit juries within the term of two years next preceding.

SEC. 118.—The people, or a person held to answer a charge for a public offense, may challenge the panel of a Grand Jury, or an individual Juror.

Who may challenge the panel or an individual Juror.

SEC. 119.—A challenge to the panel may be interposed for one or more of the following causes only:

Cause of challenge to a panel.

1—That the requisite number of ballots was not drawn from the jury box;

2—The notice of the drawing of the Grand Jury was not given in the manner provided by law;

3—That the drawing was not had in presence of the officers designated by law.

SEC. 120.—A challenge to an individual Grand Juror may be interposed for one or more of the following causes only:

Cause of challenge to an individual Grand Juror.

1—That he is not an eligible Juror, as provided by law;

2—That he is prosecutor upon a charge against the defendant;

3—That he is a witness on the part of the prosecution, and has been served with process or bond by an undertaking as such;

4—That he has formed or expressed an unqualified opinion or belief that the defendant is guilty or not guilty of the offense charged; but a hypothetical opinion, founded on hearsay or information supposed to be true, unaccompanied with malice or ill will, shall not disqualify a Juror or be a cause of challenge;

5—That he has served as a Grand or Petit Juror within two years next preceding.

Manner of taking and trying challenges.

SEC. 121.—The challenges mentioned in the last three Sections may be oral, and must be entered upon the minutes, and tried by the Court in the same manner as challenges in the case of a Trial Jury, which are triable by the Court.

Decision upon challenges.

SEC. 122.—The Court must allow or disallow the challenge and the Clerk must enter its decisions upon the minutes.

Effect of allowing a challenge to a panel.

SEC. 123.—If a challenge to the panel is allowed, the Grand Jury are prohibited from inquiring into the charge against the defendant, by whom the challenge was interposed. If, notwithstanding, they do so, and find an indictment against him, the Court must direct it to be set aside.

Effect of allowing a challenge to an individual Juror.

SEC. 124.—If a challenge to an individual Grand Juror is allowed, he cannot be present to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the Grand Jury thereon. The Grand Jury must inform the Court of a violation of this Section, and it is punishable by the Court as a contempt.

Objections to Jury can only be taken by challenge.

SEC. 125.—A person held to answer a charge for a public offense can take advantage of any objection to the panel or to an individual Grand Juror in no other mode than by challenge.

Appointment of a Foreman.

SEC. 126.—From the persons summoned to serve as Grand Jurors and appearing, the Court must appoint a foreman. The Court must also appoint a foreman when the person already appointed is excused or discharged before the Grand Jury is dismissed.

Oath of Foreman.

SEC. 127.—The following oath must be administered to the Foreman of the Grand Jury: "You, as Foreman of the Grand Jury, do solemnly swear that you will diligently inquire into and true indict-

ments make of all public offenses against the people of this Territory, committed or triable within this district of which you shall have legal evidence. That you will indict no person through malice, hatred, or ill will, nor leave any unindicted through fear, favor, or affection, or of any reward or the promise or hope thereof; but in all your indictments you will state the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

Oath of other Grand Jurors.

SEC. 128.—The following oath must be immediately thereupon administered to the other Grand Jurors present: "The same oath which your Foreman has now taken before you on his part, you and each of you will well and truly observe on your part, so help you God."

Grand Jury to be charged by the Court.

SEC. 129.—The Grand Jury being impanneled and sworn, must be charged by the Court. In doing so, the Court must give them such information as is required by law, as to their duties, and as to any charges for public offenses returned to the Court or likely to come before the Grand Jury.

Retirement of Grand Jury. Discharge of.

SEC. 130.—The Grand Jury must then retire to a private room and inquire into the offenses cognizable by them. On the completion of the business before them, they must be discharged by the Court; but, whether the business is completed or not, they are discharged by the final adjournment of the Court.

CHAPTER II.

POWERS AND DUTIES OF A GRAND JURY.

Section 131. Powers and duty of Grand Jury.
132. Indictment defined.
133. Foreman may administer oaths.
134. Evidence receivable before the Grand Jury.
135. Grand Jury not bound to hear evidence for the defendant but may order explanatory evidence, etc.
136. Degree of evidence to warrant indictment.
137. Grand Juror having knowledge of public offense must declare same.
138. Must inquire into cases of persons imprisoned, etc.

139. Entitled to free access to public prisons.
140. When and from whom they may ask advice and who may be present during their sessions.
141. Secrets of Grand Jury to be kept, etc.
142. Grand Juror not to be questioned for his conduct, except, etc.

Powers and duty of Grand Jury.

SEC. 131.—The Grand Jury must inquire into all public offenses committed or triable within the judicial district, and present them to the Court by indictment.

Indictment defined.

SEC. 132.—An indictment is an accusation in writing, presented by the Grand Jury to a competent Court, charging a person with a public offense.

Foreman may administer oaths.

SEC. 133.—The foreman may administer an oath to any witness appearing before the Grand Jury.

Evidence receivable before the Grand Jury.

SEC. 134.—In the investigation of a charge for the purpose of an indictment, the Grand Jury can receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of a witness in the cases mentioned in the third subdivision of Section seven. The Grand Jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

Grand Jury not bound to hear evidence for the defendant but may order explanatory evidence, etc.

SEC. 135.—The Grand Jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the Prosecuting Attorney to issue process for the witnesses.

Degree of evidence to warrant indictment.

SEC. 136.—The Grand Jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a Trial Jury.

Grand Juror having knowledge of public offense must declare same.

SEC. 137.—If a member of a Grand Jury knows, or has reason to believe, that a public offense, triable within the district, has been committed, he must declare the same to his fellow jurors, who must thereupon investigate the same.

SEC. 138.—The Grand Jury must inquire into the case of every person imprisoned in the jails of

the district on a criminal charge and not indicted; into the conditions and management of the public prisons within the district; and into the willful and corrupt misconduct in office of public officers of every description within the district.

Must inquire into cases of persons imprisoned, etc.

SEC. 139.—They are also entitled to free access, at all reasonable times, to the public prisons.

Entitled to free access to public prisons.

SEC. 140.—The Grand Jury may, at all reasonable times, come into Court and ask its advice on questions of law, but the Judge must not be present in the jury room during the sessions of the Grand Jury. The attorney or attorneys for the people may at all times appear before the Grand Jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever they or he thinks it necessary; but no other person is permitted to be present during the sessions of the Grand Jury except the members, interpreters and witnesses actually under examination, and no person must be permitted to be present during the expression of their opinion or giving their votes upon any matter before them.

When and from whom they may ask advice and who may be present during their sessions.

SEC. 141.—Every member of the Grand Jury must keep secret whatever he himself or any other Grand Juror may have said, or in what manner he or any other Grand Juror may have voted on a matter before them; but may, however, be required by any Court to disclose the testimony of a witness examined before the Grand Jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the Court, or to disclose the testimony given before them by any person upon a charge against such person for perjury in giving his testimony, or upon trial therefor.

Secrets of Grand Jury to be kept except, etc.

SEC. 142.—A Grand Juror cannot be questioned for any thing he may say or any vote he may give in the Grand Jury relative to a matter legally pending before the Jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow jurors.

Grand Juror not to be questioned for his conduct, except, etc.

TITLE IV.

Of the Indictment.

CHAPTER I. *Finding and presentment of the indictment.*
II. *Rules of pleading and form of indictment.*

CHAPTER I.

FINDING AND PRESENTMENT OF THE INDICTMENT.

Section 143. Indictment must be found by twelve Jurors, endorsed, etc.
144. If not found, depositions, etc., must be returned to Court, etc.
145. Names of witnesses inserted at foot of indictment.
146. Indictment, how presented and filed.
147. Proceedings when defendant is not in custody.

Indictment must be found by twelve Jurors, indorsed, etc.

SEC. 143.—An indictment cannot be found without the concurrence of at least twelve Grand Jurors. When so found it must be indorsed "A true bill," and the indorsement must be signed by the Foreman of the Grand Jury.

If not found depositions, etc., must be returned to the Court, etc.

SEC. 144.—If twelve Grand Jurors do not concur in finding an indictment against a defendant who has been held to answer, the depositions and statement, if any, transmitted to them must be returned to the Court, with an indorsement thereon, signed by the Foreman, to the effect that the charge is dismissed. Such dismissal of the charge does not prevent its re-submission to a Grand Jury at the next ensuing term, by order of the Court, but it must not, after such ensuing term be re-submitted.

Names of witnesses inserted at foot of indictment.

SEC. 145.—When an indictment is found, the names of the witnesses examined before the Grand Jury, or whose depositions may have been read before them, must be inserted at the foot of the indictment or endorsed thereon, before it is presented to the Court.

SEC. 146.—An indictment, when found by the Grand Jury, must be presented by their Foreman in their presence to the Court, and must be filed with the Clerk. Indictment, how presented and filed.

SEC. 147.—When an indictment is found against a defendant not in custody, the same proceedings must be had as are prescribed in Sections 173 to 178 inclusive, against a defendant who fails to appear for arraignment. Proceedings when defendant is not in custody.

CHAPTER II.

RULES OF PLEADING AND FORM OF THE INDICTMENT.

Section 148. Forms and rules of pleading.
149. First pleading by the people is the indictment.
150. Indictment, what to contain.
151. Indictment must be direct and certain.
152. When defendant is indicted by fictitious name, etc.
153. Indictment must charge but one offense and in one form only, except, etc. Proviso.
154. Statement as to time when offense was committed.
155. Statement as to person injured or intended to be.
156. Construction of words used in an indictment.
157. Words used in a statute need not be strictly pursued.
158. Indictment is sufficient, when.
159. Presumptions of law, etc., need not be stated.
160. Judgments, etc., how pleaded.
161. Private statutes, how pleaded.
162. Pleading in indictment for libel.
163. Pleading in an indictment for forgery when instrument has been destroyed or withheld by defendant.
164. Pleading in an indictment for perjury or subodration of perjury.
165. Pleading in an indictment for larceny or embezzlement.
166. Pleading in an indictment for exhibiting, etc., lewd and obscene books, etc.
167. Indictment against several, one or more may be acquitted.
168. Distinction between accessory before the fact and principal abrogated. Principals, how indicted.
169. Accessory may be indicted and tried though principal has not been.

SEC. 148.—All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this Act. Forms and rules of pleadings.

SEC. 149.—The first pleading on the part of the people is the indictment. First pleading by the people is the indictment.

Indictment, what to contain.

SEC. 150.—The indictment must contain:

1—The title of the action, specifying the name of the Court to which the indictment is presented, and the names of the parties;

2—A clear and consise statement of the acts or omissions constituting the offense, with such particulars of the time, place, person and property as will enable the defendant to understand distinctly the character of the offense complained of and answer the indictment. It must be substantially in the following form:

Territory of Utah.

In the———Judicial District Court.

The people of the Territory of Utah, against A. B.

A. B. is accused by the Grand Jury of this Court, by this indictment, of the crime of (giving its legal appellation, such as murder, arson, or the like, or designating it as felony or misdemeanor), committed as follows: The said A. B., on the——day of——A.D. eighteen——, at the County of——(here set forth the act or omission charged as an offense.)

Indictment must be direct and certain.

SEC. 151.—It must be direct and certain, as it regards:

1—The party charged;

2—The offense charged;

3—The particular circumstances of the offense.

When defendant is indicted by fictitious name.

SEC. 152.—When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

Indictment must charge but one offense and in one form only, except, etc.

SEC. 153.—The indictment must charge but one offense, and in one form only, except that when the offense may be committed by the use of different means, the indictment may allege the means in the alternative: *Provided*, that the offense of receiving stolen goods may be united and prosecuted in the same indictment with a charge of larceny of the same goods, and that the offense of uttering and publishing any of the instruments of writing specified in Title 13, Chapter 4, Penal Code, may be united and prosecuted in the same indictment with a charge of forgery of the same instruments, but of-

Proviso.

fenses so united shall be set forth in separate and distinct counts.

Statement as to time when offense was committed.

SEC. 154.—The precise time at which the offense was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

Statement as to person injured or intended to be.

SEC. 155.—When an offense involves the commission of, or an attempt to commit, a private injury and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

Construction of words used in an indictment.

SEC. 156.—The words used in an indictment are construed in their usual acceptance in common language, except such words and phrases as are defined by law, which are construed according to their legal meaning.

Words used in a statute need not be strictly pursued.

SEC. 157.—Words used in a statute to define a public offense need not be strictly pursued in the indictment; but other words conveying the same meaning may be used.

Indictment is sufficient, when.

SEC. 158.—The indictment is sufficient if it can be understood therefrom:

1—That it is entitled in a Court having authority to receive it, though the name of the Court be not stated:

2—That it was found by a Grand Jury of the district in which the court was held;

3—That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is to the jury unknown;

4—That the offense committed was within the jurisdiction of the Court, and is triable therein;

5—That the offense was committed at some time prior to the time of finding the indictment;

6—That the act or omission charged as the offense is clearly and distinctly set forth, without repetition, and in such a manner as to enable the Court to understand what is intended; and

To pronounce judgment upon a conviction, according to the right of the case.

Presumption of law, etc., need not be stated.

SEC. 159.—Neither presumptions of law nor matters of which judicial notice is taken, need be stated in an indictment.

Judgments, etc., how pleaded.

SEC. 160.—In pleading a judgment or other determination of, or proceeding before, a Court or officer of special jurisdiction, it is not necessary to state the facts constituting jurisdiction; but the judgment or determination may be stated as given or made, or the proceedings had. The facts constituting jurisdiction, however, must be established on the trial.

Private statutes how pleaded.

SEC. 161.—In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the Court must thereupon take judicial notice thereof.

Pleading in indictment for libel.

SEC. 162.—An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

Pleading in an indictment for forgery when instrument has been destroyed or withheld by defendant.

SEC. 163.—When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or the procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

Pleading in an indictment for perjury or subornation of perjury.

SEC. 164.—In an indictment for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what Court and before whom the oath alleged to be false was taken, and that the Court, or the person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the Court or person before whom the perjury was committed.

SEC. 165.—In an indictment for the larceny or embezzlement of money, bank notes, shares of stock,

or valuable securities, it is sufficient to allege the larceny or embezzlement to be of money, bank notes, shares of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof.

Pleading in an indictment for larceny or embezzlement.

SEC. 166.—An indictment for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

Pleading in an indictment for selling, exhibiting, etc., lewd and obscene books, etc.

SEC. 167.—Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Indictment against several, one or more may be acquitted.

SEC. 168.—The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated, and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be indicted, tried and punished as principals.

Distinction between accessory before the fact and principal abrogated.

Principals, how indicted.

SEC. 169.—An accessory to the commission of a felony may be indicted, tried, and punished, though the principal may be neither indicted nor tried.

Accessory may be indicted and tried though principal has not been.

TITLE V.

Of Pleadings and Proceedings after Indictment and before the Commencement of the Trial.

CHAPTER I. *Of the Arraignment of the Defendant.*
II. *Setting aside the Indictment.*
III. *Demurrer.*
IV. *Plea.*
V. *Removal of the Action before Trial.*
VI. *The Mode of Trial.*
VII. *Formation of the Trial Jury and the Calendar of Issues for Trial.*
VIII. *Postponement of the Trial.*

CHAPTER I.

OF THE ARRAIGNMENT OF THE DEFENDANT.

Section 170. Defendant must be arraigned in Court where indictment was found.
171. Arraignment, when defendant must be present at.
172. If in custody to be brought before the Court.
173. If discharged on bail, etc., bench warrant to issue.
174. Bench warrant, by whom and how issued.
175. Bench warrant, form of.
176. Directions in the bench warrant if the offense is bailable.
177. Bench warrant, how served.
178. Proceedings on giving bail in another county.
179. Ordering defendant into custody or increasing bail when indictment is for felony.
180. Defendant, if present when order is made, to be committed; if not, bench warrant to issue.
181. Defendant, on his arraignment, to be informed of his right to counsel. When Court to assign counsel.
182. Arraignment, how made.
183. Proceedings on indictment when defendant is not indicted by his true name.
184. Time allowed, and how defendant may answer on arraignment.

Defendant must be arraigned in the Court where indictment was found.

SEC. 170.—When the indictment is filed, the defendant must be arraigned thereon before the Court in which it is found.

Arraignment, when defendant must be present at.

SEC. 171.—If the indictment is for a felony, the defendant must be personally present; but if for a misdemeanor, he may appear upon the arraignment by counsel.

If in custody, to be brought before the Court.

SEC. 172.—When his personal appearance is necessary, if he is in custody, the Court may direct and the officer in whose custody he is must bring him before it to be arraigned.

If discharged on bail, etc., bench warrant to issue.

SEC. 173.—If the defendant has been discharged on bail, or has deposited money instead thereof, and do not appear to be arraigned when his personal attendance is necessary, the Court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the Clerk to issue a bench warrant for his arrest.

Bench warrant, by whom and how issued.

SEC. 174.—The Clerk, on the application of the Prosecuting Attorney, may, at any time after the order, whether the Court is sitting or not, issue a bench warrant to one or more counties.

Bench warrant, form of.

SEC. 175.—The bench warrant upon the indictment must, if the offense is a felony, be substantially in the following form:

County of———,

The people of the Territory of Utah to any Sheriff, Constable, Marshal, or Policeman in this Territory:

An indictment having been found on the——day of——, A.D. eighteen——, in the District Court of the——district, charging C. D. with the crime of ——(designating it generally); you are therefore commanded forthwith to arrest the above named C. D., and bring him before that Court (naming it), to answer said indictment; or if the Court have adjourned for the term, that you deliver him into the custody of the Sheriff of the county of——, or the United States Marshal.

Given under my hand, with the seal of said Court affixed, this——day of——, A.D.——.

By order of said Court.

[SEAL.] E. F., Clerk.

Directions in the bench warrant if the offense is bailable

SEC. 176.—The defendant, when arrested under a warrant for an offense not bailable, must be held in custody by the proper officer of the Court in which the indictment is found, unless admitted to bail after an examination upon a writ of *habeas*

corpus; but if the offense is bailable, there must be added to the body of the bench warrant a direction to the following effect: "Or, if he requires it, that you take him before any Magistrate in that county, or in the county in which you arrest him, that he may give bail to answer to the indictment;" and the Court, upon directing it to issue, must fix the amount of bail, and an indorsement must be made thereon and signed by the Clerk, to the following effect: "The defendant is to be admitted to bail in the sum of——dollars."

Bench warrant, how issued.

SEC. 177.—The bench warrant may be served in any district in the same manner as a warrant of arrest.

Proceedings on giving bail in another county.

SEC. 178.—If the defendant is brought before a Magistrate of another district for the purpose of giving bail, the Magistrate must proceed in respect thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings must be had thereon.

Ordering defendant into custody or increasing bail when indictment is for felony.

SEC. 179.—When the indictment is for a felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented may order the defendant to be committed to actual custody, unless he gives bail in an increased amount, to be specified in the order.

Defendant, if present when order is made, to be committed; if not, bench warrant to issue.

SEC. 180.—If the defendant is present when the order is made, he must be forthwith committed. If he is not present, a bench warrant must be issued and proceeded upon in the manner provided in this Chapter.

Defendant, on his arraignment to be informed of his right to counsel.

SEC. 181.—If the defendant appears for arraignment without counsel, he must be informed by the Court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the Court must assign counsel to defend him.

When Court to assign counsel.

Arraignment, how made.

SEC. 182.—The arraignment must be made by the Court, or by the Clerk or Prosecuting Attorney, under its direction, and consists in reading the indictment to the defendant and delivering to him a copy thereon, including the list of witnesses, and

asking him whether he pleads guilty or not guilty to the indictment.

Proceedings on indictment when defendant is not indicted by his true name.

SEC. 183.—When the defendant is arraigned, he must be informed that if the name by which he is indicted is not his true name, he must then declare his true name, or be proceeded against by the name in the indictment. If he gives no other name the Court may proceed accordingly; but if he alleges that another name is his true name, the Court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

Time allowed, and how defendant may answer on arraignment.

SEC. 184.—If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one day, to answer the indictment. He may, in answer to the arraignment, move to set aside, demur, or plead to the indictment.

CHAPTER II.

SETTING ASIDE THE INDICTMENT.

Section 185. Indictment, when to be set aside on motion.
186. Defendant waives objections unless he makes the motion.
187. If denied or granted, what proceedings to be had.
188. Effect of order for resubmission.
189. Order to set aside an indictment no bar to another prosecution.

Indictment, when to be set aside on motion

SEC. 185.—The indictment must be set aside by the Court in which the defendant is arraigned, upon his motion in either of the following cases:

1—Where it is not found, indorsed, and presented as prescribed in this Act;

2—When the names of the witnesses examined before the Grand Jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or indorsed thereon;

3—When a person is permitted to be present during the session of the Grand Jury, and when the charge embraced in the indictment is under

consideration, except the attorney or attorneys for the people and the witness and interpreter;

4—When the defendant had not been held to answer before the finding of the indictment, on any ground which would have been good for challenge, either to the panel or to any individual Grand Juror.

Defendant waives objections unless he makes the motion.

SEC. 186.—If the motion to set aside the indictment is not made, the defendant is precluded from afterwards taking the objections mentioned in the last Section.

Motion, when heard.

SEC. 187.—The motion must be heard at the time it is made, unless for cause the Court postpones the hearing to another time. If the motion is denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto. If the motion is granted, the Court must order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he has deposited money instead of bail, that the same be refunded to him, unless it directs that the case be resubmitted to the same or another Grand Jury.

If deneid or granted, what proceedings to be had.

Effect of order for resubmission.

SEC. 188.—If the Court directs the case to be resubmitted, the defendant, if already in custody, must so remain unless he is admitted to bail; or, if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment; and unless a new indictment is found before the next Grand Jury of the district is discharged, the Court must, on the discharge of such Grand Jury, make the order prescribed by the preceding Section.

Order to set aside an indictment no bar to another prosecution.

SEC. 189.—An order to set aside an indictment, as provided in this Chapter, is no bar to a future prosecution for the same offense.

CHAPTER III.

DEMURRER.

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191. Demurrer or plea, when put in.
192. Grounds of demurrer.
193. Demurrer, how put in and its form.
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198. Proceedings, if submission ordered.
199. Proceedings if demurrer is disallowed.
200. When objections forming ground of demurrer must or may be taken.

Pleading on part of defendant.

SEC. 190.—The only pleading on the part of the defendant is either a demurrer or a plea.

Demurrer or plea, when put in.

SEC. 191.—Both the demurrer and plea must be put in, in open Court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

Grounds of demurrer.

SEC. 192.—The defendant may demur to the indictment when it appears upon the face thereof either:

1—That the Grand Jury by which it was found had no legal authority to enquire into the offense charged, by reason of its not being within the legal jurisdiction of the Court;

2—That it does not substantially conform to the requirement of Sections 150 and 152;

3—That more than one offense is charged in the indictment, except as provided in Section 153;

4—That the facts stated do not constitute a public offense;

5—That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

Demurrer, how put in and its form.

SEC. 193.—The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it must be disregarded.

When heard.

SEC. 194.—Upon the demurrer being filed, the argument upon the objections presented thereby must be heard, either immediately or at such time as the Court may appoint.

Judgment on demurrer.

SEC. 195.—Upon considering the demurrer, the Court must give judgment, either allowing or disallowing it, and an order to that effect must be entered upon the minutes.

If allowed, bar to another prosecution, when.

SEC. 196.—If the demurrer is allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the Court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be resubmitted to the same or to the next succeeding Grand Jury.

If resubmission not ordered, defendant discharged, etc.

SEC. 197.—If the Court does not direct the case to be resubmitted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him.

Proceedings, if submission ordered.

SEC. 198.—If the Court directs that the case be resubmitted, the same proceedings must be had thereon as are prescribed in Sections 187 and 188.

Proceedings if demurrer is disallowed.

SEC. 199.—If the demurrer is disallowed, the Court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the Court may direct. If he does not plead, judgment may be pronounced against him.

When objections forming ground of demurrer must or may be taken.

SEC. 200.—When the objections mentioned in Section 192 appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the Court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, or after the trial, in arrest of judgment.

CHAPTER IV.

PLEA.

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203. Plea of guilty, how put in and when it may be withdrawn.
204. Plea of not guilty, what it puts in issue.

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206. What is not a former acquittal.
207. What is a former acquittal.
208. Conviction or acquittal of an indictment for a higher offense, effect of.
209. Defendant refusing to answer, plea of not guilty to be entered.

The different kinds of Pleas.

Sec. 201.—There are three kinds of pleas to an indictment. A plea of:

1—Guilty;

2—Not guilty;

3—A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.

Plea, how put in and its form.

SEC. 202.—Every plea must be oral and entered upon the minutes of the Court substantially in the following form:

1—If the defendant plead guilty, "The defendant pleads that he is guilty of the offense charged in this indictment."

2—If he plead not guilty, "The defendant pleads that he is not guilty of the offense charged in this indictment."

3—If he plead a former conviction or acquittal, "The defendant pleads that he has already been convicted (or acquitted) of the offense charged in this indictment, by the judgment of the Court of ——(naming it), rendered at——(naming the place), on the——day of——."

Plea of guilty, how put in and when it may be withdrawn.

SEC. 203.—A plea of guilty can be put in by the defendant himself only in open Court, unless upon indictment against a corporation, in which case it may be put in by counsel. The Court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted.

Plea of not guilty, what it puts in issue.

SEC. 204.—The plea of not guilty puts in issue every material allegation of the indictment.

What may be given in evidence under a plea of not guilty.

SEC. 205.—All matters of fact tending to establish a defense other than that specified in the third subdivision of Section 201 may be given in evidence under the plea of not guilty.

What is not a former acquittal

SEC. 206.—If the defendant was formerly acquitted on the ground of variance between the indictment and the proof, or the indictment was dismissed upon an objection to its form or substance,

or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

What is a former acquittal.

SEC. 207.—Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any defect in form or substance in the indictment on which the trial was had.

Conviction or acquittal on an indictment for a higher offense, effect of.

SEC. 208.—When the defendant is convicted or acquitted upon an indictment, the conviction or acquittal is a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment.

Defendant refusing to answer, plea of not guilty to be entered.

SEC. 209.—If the defendant refuses to answer the indictment by demurrer or plea, a plea of not guilty must be entered.

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REMOVAL OF THE ACTION BEFORE TRIAL.

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When action may be removed.

SEC. 210. A criminal action, prosecuted by indictment, may be removed from the Court in which it is pending on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the district where the indictment is pending.

Application for removal, how made.

SEC. 211. The application must be made in open Court, and in writing, verified by the affidavit of the defendant, a copy of which must be served on the Prosecuting Attorney at least one day before the application is made. Whenever the affidavit shows that the defendant cannot safely appear in person to make the application, because the popular

excitement against him is so great as to endanger his personal safety, and such statement is sustained by other testimony, the application may be made by counsel, and heard and determined in the absence of the defendant, though he is indicted for felony, and has not at the time of such application been arrested, or given bail, or been arraigned, or pleaded, or demurred to the indictment.

Application, when to be granted.

SEC. 212.—If the Court is satisfied that the representation of the defendant is true, an order must be made for the removal of the action to the proper Court of a district free from a like objection.

Order of removal.

SEC. 213.—The order of removal must be entered upon the minutes, and the Clerk must immediately make out and transmit to the Court to which the action is removed a certified copy of the order of removal, record, pleadings, and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

Proceedings on removal if defendant is in custody.

SEC. 214.—If the defendant is in custody, the order must direct his removal, and he must be forthwith removed by the proper officer of the district, where he is imprisoned, to the custody of the proper officer of the district to which the action is removed.

When original papers must be transmitted.

SEC. 215.—The Court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such Court. If it is necessary to have any of the original pleadings or other papers before such Court, the Court from which the action is removed must at any time, upon application of the Prosecuting Attorney or the defendant, order such papers or pleadings to be transmitted by the Clerk, a certified copy thereof being retained.

CHAPTER VI.

THE MODE OF TRIAL.

Section 216. Issue of fact defined.
217. How tried.
218. When presence of defendant is necessary on the trial.

Issue of fact defined.

SEC. 216.—An issue of fact arises:
1—Upon a plea of not guilty; or,

2—Upon a plea of a former conviction or acquittal of the same offense:

How tried.

SEC. 217.—Issues of fact must be tried by jury.

When presence of defendant is necessary.

SEC. 218.—If the indictment is for a felony, the defendant must be personally present at the trial; but if for misdemeanor, the trial may be had in the absence of the defendant; if, however, his presence is necessary, for the purpose of identification, the Court may, upon application of the Prosecuting Attorney, by an order or warrant, require the personal attendance of the defendant at the trial.

CHAPTER VII.

FORMATION OF THE TRIAL JURY AND THE CALENDAR OF ISSUES FOR TRIAL.

Section 219. Formation of the Trial Jury.
220. Clerk to prepare a calendar.
221. Order of disposing of issues on the calendar.
222. Defendant entitled to two days to prepare for trial.

Formation of Trial Jury.

SEC. 219.—Trial Juries for criminal actions are formed in the same manner as Trial Juries in civil actions.

Clerk to prepare a calendar.

SEC. 220.—The Clerk must prepare a calendar of all criminal actions pending in the Court, enumerating them according to the date of the filing of the indictment, specifying opposite the title of each action, whether it is for a felony or a misdemeanor, and whether the defendant is in custody or on bail.

Order of disposing of issues on the calendar.

SEC. 221.—The issues on the calendar must be disposed of in the following order, unless upon the application of either party, for good cause shown by affidavit, and upon two days' notice to the opposite party, with service of a copy of the affidavit in support of the application, the Court shall direct an indictment to be tried out of its order:

1—Indictments for felony, when the defendant is in custody;

2—Indictments for misdemeanor, when the defendant is in custody;

3—Indictments for felony when the defendant is on bail;

4—Indictments for misdemeanor, when the defendant is on bail.

SEC. 222.—After his plea the defendant is entitled to at least two days to prepare for trial.

Defendant entitled to two days to prepare for trial.

CHAPTER VIII.

POSTPONEMENT OF THE TRIAL.

Section 223. Postponement, when and how ordered.

SEC. 223.—When an indictment is called for trial, or at any time previous thereto, the Court may, upon sufficient cause shown by affidavit, direct the trial to be postponed to another day of the same or of the next term.

Postponement, when and how ordered

TITLE VI.

Of Proceedings after the Commencement of the Trial and before Judgment.

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II. *The trial.*
III. *Conduct of the Jury after the cause is submitted to them.*
IV. *The verdict.*
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CHAPTER I.

CHALLENGING THE JURY.

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255. Challenges for cause, order of taking.
256. Peremptory challenges may be taken after challenges for cause are exhausted.

Definition and division of challenges.

SEC. 224.—A challenge is an objection made to the Trial Jurors, and is of two kinds:

1—To the panel;

2—To an individual Juror.

Defendants cannot sever in challenges.

SEC. 225.—When several defendants are tried together, they cannot sever their challenges but must join therein.

Panel defined.

SEC. 226.—The panel is a list of Jurors returned to serve at a particular Court or for the trial of a particular action.

Challenge to the panel defined.

SEC. 227.—A challenge to the panel is an objection made to all the Jurors returned, and may be taken by either party.

Upon what founded.

SEC. 228.—A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the Jury in civil actions, or on the intentional omission of the proper officer to summon one or more of the Jurors drawn.

When and how taken.

SEC. 229.—A challenge to the panel must be taken before a Juror is sworn, and must be in writing, and must plainly and distinctly state the facts constituting the ground of challenge.

If sufficiency of the challenge be denied, adverse party may except. Exception, how taken.

SEC. 230.—If the sufficiency of the facts alleged as ground of the challenge is denied, the adverse party may except [to] the challenge. The exception need not be in writing, but must be entered on the minutes of the Court, and thereupon the Court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

If exception be overruled, Court may allow denial, etc.

SEC. 231.—If, on the exception, the Court finds the challenge sufficient, it may, if justice requires it, permit the party excepting to withdraw his exce-

tion, and to deny the facts alleged in the challenge. If the exception is allowed, the Court may, in like manner, permit an amendment to the challenge.

Denial of challenge, how made, and trial thereof.

SEC. 232.—If the challenge is denied, the denial may be oral, and must be entered on the minutes of the Court, and the Court must proceed to try the question of fact, and upon such trial the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other person, may be examined to prove or disprove the facts alleged as the ground of the challenge.

Who may be examined on trial of challenge.

If challenge allowed, jury to be discharged; if disallowed, to be impanneled.

SEC. 233.—If, either upon an exception to the challenge or a denial of the facts, the challenge is allowed, the Court must discharge the Jury, so far as the trial of the indictment in question is concerned. If it is disallowed, the Court must direct the jury to be impanneled.

Defendant to be informed of his right to challenge individual Jurors.

SEC. 234.—Before a Juror is called, the defendant must be informed by the Court, or under its direction, that if he intends to challenge an individual Juror he must do so when the Juror appears, and before he is sworn.

Kinds of challenge to individual Jurors.

SEC. 235.—A challenge to an individual Juror is either:

1—Peremptory; or,

2—For cause.

Challenges, when taken.

SEC. 236.—It must be taken when the Juror appears and before he is sworn to try the cause; but the Court may for cause permit it to be taken after the Juror is sworn, and before the Jury is completed.

Peremptory challenge, what and how taken.

SEC. 237.—A peremptory challenge can be taken by either party, and may be oral. It is an objection to a Juror for which no reason need be given, but upon which the Court must exclude him.

Peremptory challenges, number of.

SEC. 238.—If the offense charged is punishable with death or with imprisonment in the Penitentiary for life, the defendant is entitled to ten and the Territory to five peremptory challenges. On a trial for any other offense, the defendant is entitled to five and the Territory to three peremptory challenges.

Challenge for cause defined. Kinds of.

SEC. 239.—A challenge for cause may be taken by either party. It is an objection to a particular Juror and is either:

1—General—That the Juror is disqualified from serving in any case; or,

2—Particular—That he is disqualified from serving in the action on trial.

SEC. 240.—General causes of challenge are:

General causes of challenge.

1—A conviction for felony;

2—A want of any of the qualifications prescribed by law to render a person a competent Juror;

3—Unsoundness of mind, or such defect in the faculties of mind or organs of the body as render him incapable of performing the duties of a Juror.

SEC. 241.—A particular cause of challenge is:

Particular causes of challenge.

1—For such a bias, as when the existence of the facts is ascertained, in judgment of law, disqualifies the Juror, and which is known in this Act as implied bias;

2—For the existence of a state of mind on the part of the Juror which leads to a just inference, in reference to the case that he will not act with entire impartiality, which is known in this Act, as actual bias.

SEC. 242.—A challenge for implied bias may be taken for all or any of the following causes, and for no other:

Challenge for implied bias, ground of.

1—Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant;

2—Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages;

3—Being the party adverse to the defendant in a civil action, or having complaint against or being accused by him in a criminal prosecution;

4—Having served on the Grand Jury which found the indictment, or on a Coroner's Jury which inquired into the death of a person whose death is the subject of the indictment;

5—Having served on a Trial Jury which has tried another person for the offense charged in the indictment;

6—Having been one of the Jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it;

7—Having served as a Juror in a civil action brought against the defendant for the act charged as an offense;

8—Having found or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged;

9—If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a Juror.

Exemption not a ground for challenge.

SEC. 243.—An exemption from service on a Jury is not a cause of challenge but the privilege of the person exempted.

Causes of challenge, how stated.

SEC. 244.—In a challenge for implied bias, one or more of the causes stated in Section 242 must be alleged. In a challenge for actual bias, the causes stated in Section 241 must be alleged. In either case the challenge may be oral, but must be entered on the minutes of the Court.

Exceptions to challenge, and denial thereof.

SEC. 245.—The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon as are prescribed in Section 230, except that if the exception be allowed the Juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

Challenge, how tried.

SEC. 246.—If the facts are denied, the challenge must be tried as follows:

1—If it be for implied bias, by the Court;

2—If it be for actual bias, by Triers.

Triers, how appointed.

SEC. 247.—The Triers are three impartial persons, not on the Jury panel, appointed by the Court.

Majority may decide.

All challenges for actual bias must be tried by three Triers thus appointed, a majority of whom may decide.

Oath of Triers.

SEC. 248.—The Triers must be sworn generally to inquire whether or not the several persons who may be challenged are biased against the challenging party, and to decide the same truly, according to the evidence.

SEC. 249.—Upon the trial of a challenge to an individual Juror, the Juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry.

Juror challenged may be examined as a witness.

SEC. 250.—Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge.

Other witnesses. Rules of evidence on trial of challenge.

SEC. 251.—On the trial of a challenge for implied bias, the Court must determine the law and the fact, and must either allow or disallow the challenge, and direct an entry accordingly, upon the minutes.

Challenge for implied bias, how determined

SEC. 252.—On the trial of a challenge for actual bias, when the evidence is concluded, the Court must instruct the Triers that it is their duty to find the challenge true, if, in their opinion, the evidence warrants the conclusion that the Juror has such a bias against the party challenging him as to render him not impartial; and that if, from the evidence, they believe him free from such bias, they must find the challenge not true; that a hypothetical opinion unaccompanied with malice or ill will, founded on hearsay or information supposed to be true, is of itself no evidence of bias sufficient to disqualify a Juror. The Court can give no other instruction.

Instructions to Triers on trial of challenge for actual bias.

SEC. 253.—The Triers must thereupon find the challenge either true or not true, and their decision is final. If they find it true, the Juror must be excluded.

Verdict of Triers and its effect

SEC. 254.—All challenges to an individual Juror, except peremptory, must be taken, first by the defendant, and then by the people, and each party must exhaust all his challenges before the other begins.

Challenge, first by the defendant, and then by the people.

SEC. 255.—The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

Challenge for cause, order of taking.

1—To the panel;

2—To an individual Juror, for a general disqualification;

3—To an individual Juror, for an implied bias;

4—To an individual Juror, for an actual bias.

Peremptory challenges may be taken after challenges for cause are exhausted.

SEC. 256.—If all challenges on both sides are disallowed, either party, first the people and then the defendant, may take a peremptory challenge, unless the parties' peremptory challenges are exhausted.

CHAPTER II.

THE TRIAL.

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281. Court to decide all questions of law arising during trial.
282. On trial for libel Jury to determine law and fact.
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284. Charging the Jury.

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286. When defendant on bail appears for trial he may be committed.
287. If Prosecuting Attorney fails to attend, Court must appoint substitute.

SEC. 257.—The Jury having been impanneled and sworn, the trial must proceed in the following order: Order of trial.

1—If the indictment is for felony, the Clerk must read it and state the plea of the defendant to the Jury. In all other cases this formality may be dispensed with;

2—The Prosecuting Attorney or other counsel for the people must open the cause and offer the evidence in support of the indictment;

3—The defendant or his counsel may then open the defense, and offer his evidence in support thereof;

4—The parties may then respectively offer rebutting testimony only, unless the Court for good reason, in furtherance of justice, permit them to offer evidence upon their original case;

5—When the evidence is concluded, unless the case is submitted to the Jury on either side, or on both sides without argument, the Prosecuting Attorney or other counsel for the people must open, and the Prosecuting Attorney may conclude the argument;

6—The Prosecuting Attorney or other counsel for the people, in their respective arguments to the Jury, may read such authorities as they deem applicable to the case. The Prosecuting Attorney or other counsel for the people, in his opening argument, must state fully and clearly his propositions of fact, with his points of law, and such authorities as he intends to read in his closing argument;

7—The Judge must then charge the Jury, if requested by either party; he may state the testimony and declare the law, but must not charge the Jury in respect to matters of fact; and in each case, he shall inform the Jury that they are the sole judges of the credibility of the witnesses, of the weight of the evidence, and of the facts; such charge must be reduced to writing before it is given, unless by the mutual consent of the parties it is given orally.

When order of trial may be departed from.

SEC. 258.—When the state of the pleadings requires it, or in any other case, for good reasons, and in the sound discretion of the Court, the order of argument prescribed in the last Section may be departed from.

Number of counsel who may argue the case to the Jury.

SEC. 259.—If the indictment is for an offense punishable with death, two counsel on each side may argue the cause to the jury. If it is for any other offense, the Court may, in its discretion, restrict the argument to one counsel on each side.

Defendant presumed innocent until the contrary is proven. Reasonable doubt.

SEC. 260.—A defendant in a criminal action is presumed to be innocent, until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

When reasonable doubt as to degree, he can only be convicted of lowest.

SEC. 261.—When it appears that the defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

Separate trials.

SEC. 262.—When two or more defendants are jointly indicted for a felony, any defendant requiring it must be tried separately; in other cases the defendant jointly indicted may be tried separately or jointly, in the discretion of the Court.

Discharging one of several defendants, before verdict, to be a witness.

SEC. 263.—When two or more persons are included in the same indictment, the Court may, at any time before the defendants have gone into their defense, on the application of the Prosecuting Attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people.

Sum:.

SEC. 264.—When two or more persons are included in the same indictment, and the Court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged from the indictment before the evidence is closed, that he may be a witness for his co-defendant.

Effect of such discharge.

SEC. 265.—The order mentioned in the last two Sections is an acquittal of the defendant discharged, and is a bar to another prosecution for the same offense.

Rules of evidence in civil, applicable to criminal cases, except, etc.

SEC. 266.—The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this Act.

Evidence on trial for conspiracy.

SEC. 267.—Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt act [acts] are expressly alleged in the indictment, nor unless one of the acts alleged is proved; but other overt acts not alleged in the indictment may be given in evidence.

When the burden of proof shifts in trial for murder.

SEC. 268.—Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecutions tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

Evidence upon trial for forging bank bills, etc.

SEC. 269.—Upon a trial for forging any bill or note, purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by general reputation; and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

Experts.

Evidence upon trial for abortion and seduction.

SEC. 270.—Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away any female of previous chaste character, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offense was committed, unless she is corroborated by other evidence.

Evidence on trial for selling, etc., lottery tickets.

SEC. 271.—Upon a trial for violation of any of the provisions of Section 1990 to Section 2005, both inclusive, of the Compiled Laws of Utah, it is not necessary to prove the existance of any lottery in which any lottery ticket purports to have been issued, or to prove the actual signing of any such ticket or share, or pretended ticket or share of any pretended lottery, nor that any

lottery ticket, share, or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases proof of the sale, furnishing, bartering or procuring of any ticket, share, or interest therein, or of any instrument purporting to be a ticket, or part or share of any such ticket, is evidence that such share or interest was signed and issued according to the purport thereof.

Evidence of false pretenses.

SEC. 272.—Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property, or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language, unaccompanied by a false token or writing, unless the pretense or some note or memorandum thereof be in writing, subscribed by or in the hand writing of the defendant, or unless the pretense be proven by the testimony of two witnesses, or that of one witness and corroborating circumstances; but this Section shall not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property.

Conviction cannot be had on uncorroborated testimony of accomplice.

SEC. 273.—A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence, which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, if it merely shows the commission of the offense, or the circumstances thereof.

Proceedings when evidence shows higher offense than that charged.

SEC. 274.—If it appears by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment, the Court may direct the Jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed or continued on, or admitted to bail to answer any indictment which may be found against him for a higher offense. If an indictment for the higher offense is found by a Grand Jury impanneled at the same or the next term thereafter, he must be tried thereon,

and a plea of former acquittal to such last found indictment is not sustained by the fact of the discharge of the Jury on the first indictment.

Court may discharge when it has not jurisdiction, etc.

SEC. 275.—The Court may direct the Jury to be discharged where it appears that it has no jurisdiction of the offense, or that the facts charged in the indictment do not constitute an offense punishable by law.

Proceedings when Jury discharged for want of jurisdiction of offense committed out of the Territory.

SEC. 276.—If the Jury is discharged because the Court has not jurisdiction of the offense charged in the indictment, and it appears that it was committed out of the jurisdiction of this Territory, the defendant must be discharged.

View of premises, when ordered, and how conducted.

SEC. 277.—When, in the opinion of the Court, it is proper that the Jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the Jury to be conducted in a body, in the custody of the officer, to the place, which must be shown to them by a person appointed by the Court for that purpose; and the officer must be sworn to suffer no person to speak or communicate with the Jury, nor do so himself, on any subject connected with the trial, and to return them into Court without unnecessary delay, or at a specified time.

Jurors may be permitted to separate during trial.

SEC. 278.—The Jurors sworn to try an indictment may, at any time before the submission of the cause to the Jury, in the discretion of the Court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the Jurors together until the next meeting of the Court, to suffer no person to speak to them or communicate with them, nor to do so himself, or any subject connected with the trial, and to return them into Court at the next meeting thereof.

If kept together, oath of officer.

Jury, at each adjournment must be admonished, etc.

SEC. 279.—The Jury must also at each adjournment of the Court, whether permitted to separate or kept in charge of officer, be admonished by the Court that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

Proceedings when Juror becomes unable to perform his duties.

SEC. 280.—If, before the conclusion of the trial, a Juror becomes sick, so as to be unable to perform his duty, the Court may order him to be discharged. In that case a new Juror may be sworn and the trial begin anew, or the Jury may be discharged and a new Jury then or afterwards impanneled.

Court to decide all questions of law.

SEC. 281.—The Court must decide all questions of law which arise in the course of a trial.

On trial for libel, Jury to determine law and fact.

SEC. 282.—On the trial of an indictment for libel, the Jury have the right to determine the law and the fact.

In all other cases Court to decide questions of law.

SEC. 283.—On the trial of an indictment for any other offense than libel, questions of law are to be decided by the Court, questions of fact by the Jury.

Charging the Jury.

SEC. 284.—In charging the Jury, the Court must state to them all matters of law necessary for their information. Either party may present to the Court any written charge and request that it be given. If the Court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused, the Court must indorse and sign its decision. If part be given and part refused, the Court must distinguish, showing by the indorsement what part of the charge was given and what part refused.

Jury may decide in Court or retire in charge of officer. Oath of officer.

SEC. 285.—After hearing the charge the Jury may either decide in Court or may retire for deliberation. If they do not agree without retiring, an officer must be sworn to keep them together in some private and convenient place, and not permit any person to speak to or communicate with them, nor to do so himself, unless by order of the Court, or to ask them whether they have agreed upon a verdict, and to return them into Court when they have so agreed, or when ordered by the Court.

When defendant on bail appears for trial, he may be committed.

SEC. 286.—When a defendant who has given bail appears for trial, the Court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer, to abide the judgment or further order of the Court, and he must be committed and held in custody accordingly.

If Prosecuting Attorney fails to attend, Court must appoint substitute.

SEC. 287.—If the Prosecuting Attorney fails to attend at the trial, the Court must appoint some attorney at law to perform the duties of the Prosecuting Attorney on such trial.

CHAPTER III.

CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

Section 288. Accommodations for the Jury when kept together.
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290. After retirement, may return into Court for information.
291. If, after retirement, Juror becomes sick, etc., Jury may be discharged.
292. Jury not to be discharged for any other cause, unless there is no reasonable probability of their agreeing.
293. When Jury discharged or prevented from giving a verdict, cause to be again tried.
294. Court may adjourn during the absence of the Jury, but deemed open for all purposes connected wi h cause.
295. Final adjournment discharges Jury.

Accommodations for the Jury when kept together.

SEC. 288.—While the Jury are kept together, either during the progress of the trial or after their retirement for deliberation they must be provided by the proper officer, with suitable and sufficient food and lodging.

What papers the Jury may take with them.

SEC. 289.—Upon retiring for deliberation, the Jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the Court to be taken from the person having them in possession. They may also take with them the written instructions given, and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

After retirement may return to Court for information.

SEC. 290.—After the jury have retired for deliberation, if there is any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into Court. Upon being brought into Court, the information required must be given in the presence of, or after notice to, the Prosecuting Attorney and the defendant or his counsel.

If, after retirement, Juror becomes sick, etc., Jury may be discharged.

SEC. 291.—If, after the retirement of the Jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause

occur to prevent their being kept for deliberation, the Jury may be discharged.

Jury not to be discharged for any other cause, unless there is no reasonable probability of their agreeing.

SEC. 292.—Except as provided in the last Section, the Jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict and rendered it in open Court, unless by consent of both parties, entered upon the minutes; or, unless, at the expiration of such time as the Court may deem proper, it satisfactorily appears that there is no reasonable probability that the Jury can agree.

When Jury discharged or prevented from giving a verdict, cause to be again tried.

SEC. 293.—In all cases where a Jury are discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial or after the cause is submitted to them, the cause may be again tried at the same or another term.

Court may adjourn during the absence of the Jury, but deemed open for all purposes connected with cause.

SEC. 294.—While the Jury are absent the Court may adjourn from time to time, as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the Jury, until a verdict is rendered or the Jury discharged.

Final adjournment discharges Jury.

SEC. 295.—A final adjournment of the Court discharges the Jury.

CHAPTER IV.

THE VERDICT.

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305. Polling the Jury.
306. Recording the verdict.
307. Defendant, when to be discharged.
308. When to be detained.

SEC. 296.—When the Jury have agreed upon their verdict they must be conducted into Court by

Return of Jury.

the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving their verdict. In that case the action may be again tried at the same or another term.

Appearance of defendant.

SEC. 297.—If indicted for felony, the defendant must, before the verdict is received, appear in person. If for a misdemeanor, the verdict may be rendered in his absence.

Manner of taking verdict.

SEC. 298.—When the jury appear they must be asked by the Court or Clerk whether they have agreed upon their verdict, and if the Foreman answers in the affirmative, they must, on being required, declare the same.

Verdict, form of

SEC. 299.—A verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people" or "for the defendant."

Degree of crime, Jury to find.

SEC. 300.—Whenever a crime is distinguished into degrees, the Jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

Jury may convict of lesser offense, or of attempt.

SEC. 301.—They [The] Jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment, or of an attempt to commit the offense.

Verdict as to some defendants and another trial as to others.

SEC. 302.—On an indictment against several, if the Jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the others may be tried by another Jury.

Reconsideration of verdict, when it may be directed by the Court.

SEC. 303.—When there is a verdict of conviction, in which it appears to the Court that the Jury have mistaken the law, the Court may explain the reason for that opinion and direct the Jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered; but when there is a verdict of acquittal, the Court cannot require the Jury to reconsider it. If the Jury render an informal verdict the Court may direct them to reconsider it, and it cannot be record-

ed until it is rendered in some form from which it can be clearly understood what the intent of the Jury is.

Informal verdict, when judgment may be given on.

SEC. 304.—If the Jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the Court must give judgment of acquittal. But no judgment of conviction can be given unless the Jury expressly find against the defendant upon the issue.

Polling the Jury

SEC. 305.—When a verdict is rendered and before it is recorded, the Jury may be polled, at the request of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the Jury must be sent out for further deliberation.

Recording the verdict.

SEC. 306.—When the verdict given is such as the Court may receive, the Clerk must immediately record it in full upon the minutes, read it to the Jury, and inquire of them whether it is their verdict. If any Juror disagree, the fact must be entered upon the minutes and the Jury again sent out; but if no disagreement is expressed, the verdict is complete, and the Jury must be discharged from the case.

Defendant, when to be discharged.

SEC. 307.—If judgment of acquittal is given on a verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

When to be detained.

SEC. 308.—If a verdict is rendered against the defendant, he must be remanded, if in custody, or if on bail, he may be committed to the proper officer to await the judgment of the Court upon the verdict. When committed his bail is exonerated, or if money is deposited instead of bail, it must be refunded to the defendant.

CHAPTER V.

BILLS OF EXCEPTION.

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315. Written charges need not be excepted to.

Exceptions, in what cases may be taken.

SEC. 309.—On the trial of an indictment, exceptions may be taken by the defendant to a decision of the Court upon a matter of law, in any of the following cases:

1—In disallowing a challenge to the pannel of the Jury, or to an individual Juror, for implied bias;

2—In admitting or rejecting witnesses or testimony, or in charging the Triers on the trial of a challenge to a Juror for actual bias;

3—In admitting or rejecting witnesses or testimony, or in deciding any question of law not a matter of discretion, or in charging or instructing the Jury upon the law on the trial of the issue.

When to be settled, signed and filed.

SEC. 310.—A bill containing the exceptions must be settled and signed by the Judge, and filed with the Clerk within ten days after the trial of the cause, unless further time is granted.

Exceptions after trial, which may be taken by either party.

SEC. 311.—Exceptions may be taken by either party to a decision of the Court or Judge upon a matter of law:

1—In granting or refusing a motion in arrest of judgment;

2—In granting or refusing a motion for a new trial;

3—In making, or refusing to make, an order after judgment, affecting the substantial rights of the parties.

Exceptions after trial, which may be taken by defendant.

SEC. 312.—Exceptions may be taken by the defendant to a decision of the Court upon a matter of law:

1—In refusing to grant a motion for a change of the place of trial;

2—In refusing to postpone the trial on motion of the defendant.

Exceptions in two preceding Sections, how and when settled and filed.

SEC. 313.—A bill containing the exceptions mentioned in the last two Sections must be settled by the Judge, and filed with the Clerk of the Court within ten days after the making of the order or ruling complained of.

Bill of exceptions, must contain what.

SEC. 314.—A bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken.

Written charges need not be excepted to.

SEC. 315.—When written charges have been presented, given, or refused, the questions presented in such charges need not be excepted to or embodied in a bill of exceptions, but the written charges or the report, with the indorsements showing the action of the Court, form part of the record, and any error in the decision of the Court thereon may be taken advantage of on appeal, in like manner as if presented in a bill of exceptions.

CHAPTER VI.

NEW TRIALS.

Section 316. New trial defined.
317. Its effect.
318. New trial, when it may be granted.
319. Application for, when to be made.

New trial defined.

SEC. 316.—A new trial is a re-examination of the issue in the same Court, before another Jury, after a verdict has been given.

Its effect.

SEC. 317.—The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew and the former verdict cannot be used or referred to either in evidence or in argument.

New trial, when it may be granted.

SEC. 318.—When a verdict has been rendered against the defendant, the Court may, upon his application, grant a new trial in the following cases only:

1—When the trial has been had in his absence, if the indictment is for a felony;

2—When the Jury has received any evidence out of Court other than that resulting from a view of the premises;

3—When the Jury has separated without leave of the Court, after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case may have been prevented;

4—When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the Jurors;

5—When the Court has misdirected the Jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial;

6—When the verdict is contrary to law or evidence;

7—When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial.

When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the Court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable.

Application for, when to be made.

SEC. 319.—The application for a new trial must be made before judgment.

CHAPTER VII.

ARREST OF JUDGMENT.

Section 320. Motion in arrest of judgment defined. Upon what defects founded, and when made.
321. Court may arrest judgment without motion.

Section 322. Arresting judgment; effect of.
323. Defendant, when to be held; when discharged.

Motion in arrest of judgment defined.

SEC. 320.—A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant, on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned in Section 192, unless the objection to the indictment has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment.

Upon what defects founded and when made

Court may arrest judgment without motion.

SEC. 321.—The Court may also, on its own view of any of these defects, arrest the judgment without motion.

Arresting judgment, effect of.

SEC. 322.—The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

Defendant, when to be held. When discharged.

SEC. 323.—If, from the evidence on the trial, there is reason to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the Court may order him to be recommitted to the proper officer, or admitted to bail anew, to answer the new indictment. If the evidence shows him guilty of another offense, he must be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution or indictment. But if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged; or if admitted to bail, his bail is exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant; and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment was founded.

TITLE VII.

Of Judgment and Execution.

CHAPTER I. *The Judgment.*
II. *The Execution.*

CHAPTER I.

THE JUDGMENT.

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Appointing time for judgment.

SEC. 324.—After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of former conviction or acquittal, if the judgment is not arrested or a new trial granted, the Court must appoint a time for pronouncing judgment, which must be at least two days after the verdict, if the Court intend to remain in session so long; or if not, as remote a time as can reasonably be allowed. But in no case can the judgment be rendered in less than six hours after the verdict.

Upon plea of guilty, Court must determine degree.

SEC. 325.—Upon a plea of guilty of a crime distinguished or divided into degrees, the Court must, before passing sentence, determine the degree.

Presence of defendant.

SEC. 326.—For the purpose of judgment, if the conviction is for felony, the defendant must be personally present; if for a misdemeanor, the judgment may be pronounced in his absence.

Defendant when on bail, how brought before the Court.

SEC. 327.—If the defendant has been discharged on bail or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the Court, in addition to the forfeiture of the undertaking of bail, or of money deposited, may direct the Clerk to issue a bench warrant for his arrest.

Bench warrant.

Bench warrant, who may issue and when.

SEC. 328.—The Clerk, on the application of the Prosecuting Attorney, may, at any time after the order, whether the Court be sitting or not, issue a bench warrant into one or more counties.

Bench warrant, form of.

SEC. 329.—The bench warrant must be substantially in the following form:

County of———

The people of the Territory of Utah, to any Sheriff, Constable, Marshal, or Policeman in this Territory:

A. B., having been, on the——day of——, A.D. eighteen hundred and——duly convicted in the—— District Court of the——Judicial District, of the crime of——, (designating it generally,) you are therefore commanded forthwith to arrest the above named A. B. and bring him before that Court for judgment; or if the Court has adjourned for the term, that you deliver him into the custody of the United States Marshal, or Sheriff of the county of ——. Given under my hand with the seal of said county affixed, this——day of——A. D. eighteen hundred and——.

By order of the Court.

[SEAL.] E. F., Clerk.

Bench warrant, how served.

SEC. 330.—The bench warrant may be served in any county in the same manner as a warrant of arrest.

Arrest of defendant.

SEC. 331.—Whether the bench warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant, and bring him before the Court, or commit him to the officer mentioned in the warrant, according to the command thereof.

Arraignment of defendant for judgment.

SEC. 332.—When the defendant appears for judgment he must be informed by the Court, or by the Clerk, under its direction, of the nature of the indictment and of his plea, and the verdict, if any, thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him.

What cause may be shown against judgment.

SEC. 333.—He may show for cause against the judgment:

1—That he is insane; and if, in the opinion of the Court, there is reasonable ground for believing him to be insane, the question of insanity must be tried, as provided in Chapter 6, Title 9. If, upon the trial of that question, the Jury find that he is sane, judgment must be pronounced, but if they find him insane, he must be committed to a lunatic asylum until he becomes sane; and when notice is given of that fact, as provided in Section 459, he must be brought before the Court for judgment;

2—That he has good cause to offer, either in arrest of judgment or for a new trial; in which case the Court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

If no cause shown, judgment to be pronounced.

SEC. 334.—If no sufficient cause is alleged or appears to the Court why judgment should not be pronounced, it must thereupon be rendered.

Court may summarily inquire into circumstances in aggravation or mitigation of punishment.

SEC. 335.—After a plea or verdict of guilty, when a discretion is conferred upon the Court as to the extent of the punishment, the Court, upon the oral suggestion of either party that there are circumstances which may be properly taken into view either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct.

Proof of facts, etc., in mitigation, how made.

SEC. 336.—The circumstances must be presented by the testimony of witnesses examined in open Court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a Magistrate of the county, out of Court, upon such notice to the adverse party as the Court may direct. No affidavit or testimony, or representation of any kind, verbal or written, can be be offered to or received by the Court or a Judge

thereof, in aggravation or mitigation of the punishment, except as provided in this and the preceding Section.

Duration of imprisonment on judgment to pay a fine.

SEC. 337.—A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every one dollar of the fine.

Judgment to pay a fine constitutes a lien.

SEC. 338.—A judgment that the defendant pay a fine constitutes a lien, in like manner as a judgment for money rendered in a civil action.

Entry of judgment and judgment roll.

SEC. 339.—When judgment upon a conviction is rendered, the Clerk must enter the same upon the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction, (if one), and must, within five days, annex together and file the following papers, which constitute a record of action.

1—A copy of the minutes of a challenge interposed by the defendant to the panel of the Grand Jury, or to an individual Grand Juror, and the proceedings and decision thereon;

2—The indictment and a copy of the minutes of the plea or demurrer;

3—A copy of the minutes of a challenge interposed to the panel of the Trial Jury or to an individual Juror, and the proceedings and decisions thereon;

4—A copy of the minutes of the trial;

5—A copy of the minutes of the judgment;

6—The bill of exceptions, if there be one;

7—The written charges asked of the Court, and refused, if there be any;

8—A copy of all charges given and of the indorsements thereon.

CHAPTER II.

THE EXECUTION.

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356. Execution, where to take place and who to be present.
357. Return upon death warrant.

Authority for the execution of a judgment other than death.

SEC. 340.—When a judgment, other than death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

If for fine alone, exception to issue as in civil cases.

SEC. 341.—If the judgment is for a fine alone, execution may be issued thereon as on a judgment in a civil action.

Judgment of fine and imprisonment, by whom and how executed.

SEC. 342.—If the judgment is for imprisonment, or a fine, and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

Judgment of imprisonment, how executed.

SEC. 343.—If the judgment is for imprisonment in the Penitentiary, the proper officer must, upon receipt of a certified copy thereof, take and deliver the defendant to the Warden of the Penitentiary. He must also deliver to the Warden the certified copy of the judgment and take from the Warden a receipt for the defendant.

Warrant of execution upon judgment of death. Time of execution.

SEC. 344.—When judgment of death is rendered, a warrant, signed by the Judge, and attested by the Clerk, under the seal of the Court, must be drawn and delivered to the proper officer. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which

must not be less than thirty nor more than sixty days from the time of judgment.

Judge to transmit statement of conviction and testimony to Governor.

SEC. 345.—The Judge of the Court at which a conviction requiring judgment of death is had, must, immediately after the conviction, transmit to the Governor, by mail or otherwise, a statement of the conviction, and judgment, and of the testimony given at the trial.

Governor may require opinion of Justice of Supreme Court, etc., thereon.

SEC. 346.—The Governor may thereupon require the opinion of the Justice of the Supreme Court, and of the Attorney General, or any of them, upon the statement so furnished.

Judgment of death, when suspended.

SEC. 347.—No Judge, Court, or officer, other than the Governor, can suspend the execution of a judgment of death, except the proper officer, as provided in the six succeeding Sections, unless an appeal is taken.

If reason to suppose defendant insane, Jury to inquire into it; how and by whom ordered.

SEC. 348.—If, after judgment of death, there is good reason to suppose that the defendant has become insane, the proper officer, with the concurrence of the Judge of the Court, by which the judgment was rendered, may summon from the list of the Jurors selected by the proper officers for the year, a Jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the Prosecuting Attorney, or other counsel for the people.

Prosecuting Attorney, duty of, upon inquisition

SEC. 349.—The Prosecuting Attorney must attend the inquisition, and may produce witnesses before the Jury, for which purpose he may issue process in the same manner as for witnesses to attend before the Grand Jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the Court.

Inquisition, how certified and filed.

SEC. 350.—A certificate of the inquisition must be signed by the Jurors and the proper officer, and filed with the Clerk of the Court in which the conviction was had.

Proceedings upon finding of the Jury.

SEC. 351.—If is it found by the inquisition that the defendant is sane, the proper officer must execute the judgment; but if it is found that he is insane, such officer must suspend the execution of the judgment until he receives a warrant from the Governor, or from the Judge of the Court by which the judgment was rendered, directing the execution of the

judgment. If the inquisition finds that the defendant is insane, the officer must immediately transmit it to the Governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

When female under judgment of death is supposed to be pregnant, proceedings.

SEC. 352.—If there is a good reason to suppose that a female against whom a judgment of death is rendered is pregnant, the proper officer, with the concurrence of the Judge of the Court by which the judgment was rendered, may summon a Jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the Prosecuting Attorney, and the provisions of Section 349 and 350 apply to the proceedings upon the inquisition.

Proceedings upon finding of the Jury.

SEC. 353.—If it is found by the inquisition that the female is not pregnant, the proper officer must execute the judgment; if it is found that she is pregnant, the officer must suspend the execution of the judgment, and transmit the inquisition to the Governor. When the Governor is satisfied that the female is no longer pregnant, he may issue his warrant, appointing a day for the execution of the judgment.

Proceedings when judgment of death remaining in force has not been executed.

SEC. 354.—If, for any reason, a judgment of death has not been executed, and it remains in force, the Court in which the conviction was had, on the application of the Prosecuting Attorney, must order the defendant to be brought before it, or, if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the Court, it must inquire into the facts, and if no legal reasons exist against the execution of the judgment, must make an order that the proper officer execute the judgment at a specified time. The officer must execute the judgment accordingly.

Punishment of death, how inflicted.

SEC. 355.—The punishment of death must be inflicted by hanging the defendant by the neck until he is dead, or by being shot, at his election. If the defendant neglect or refuse to make the election, the Court, at the time of rendering the sentence, must declare the mode and enter the same as a part of its judgment.

Execution, where to take place and who to be present.

SEC. 356.—A judgment of death must be executed within the walls or yard of a jail or some convenient private place in the district. The proper officer must be present, with such assistants as he may need, at the execution, and must invite the presence of a physician, and the Prosecuting Attorney, and he shall, at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name and any person, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this Section can be present at the execution, nor can any person under age be permitted to witness the same.

Return upon death warrant.

SEC. 357.—After the execution, the proper officer must make a return upon the death warrant, showing the time, mode and manner in which it was executed.

TITLE VIII.

Of Appeals to the Supreme Court.

CHAPTER I. *Appeals, when allowed and how taken, and the effect thereof.*
II. *Dismissing an appeal for irregularity.*
III. *Argument on the appeal.*
IV. *Judgment on appeal.*

CHAPTER I.

APPEALS, WHEN ALLOWED AND HOW TAKEN AND THE EFFECT THEREOF.

Section 358. Either party may appeal, on question of law.
359. Parties, how designated on appeal.
360. Appeal by defendant; in what cases may be taken.
361. Appeal by the people, in what cases may be taken.

Section 362. Appeal, within what time to be taken.
363. Appeal, how taken.
364. When notice may be served by publication.
365. Appeal by the people, effect of.
366. Appeal by defendant, effect of.
367. Same. Duty of officer.
368. Same.

Either party may appeal on a question of law.

SEC. 358.—Either party in a criminal action, may appeal to the Supreme Court on questions of law alone, as prescribed in this Chapter.

Parties, how designated on appeal.

SEC. 359.—The party appealing is known as the appellant, and the adverse party as the respondent, but the title of the action is not changed in consequence of the appeal.

Appeal by defendant, in what cases may be taken.

SEC. 360.—An appeal may be taken by the defendant:

1—From a final judgment of conviction;

2—From an order denying a motion for a new trial;

3—From an order made after judgment, affecting the substantial rights of the party.

Appeal by the people, in what cases may be taken.

SEC. 361.—An appeal may be taken by the people:

1—From a judgment for the defendant on a demurrer to the indictment;

2—From an order granting a new trial;

3—From an order arresting judgment;

4—From an order made after judgment affecting the substantial rights of the people.

Appeals, within what time to be taken.

SEC. 362.—An appeal from a judgment must be taken within one year after its rendition, and from an order within sixty days after it is made.

Appeal, how taken.

SEC. 363.—An appeal is taken by filing with the Clerk of the Court in which the judgment or order appealed from is entered or filed, a notice stating the appeal from the same, and serving a copy thereof upon the attorney of the adverse party.

When notice may be served by publication.

SEC. 364.—If personal service of the notice cannot be made, the Judge of the Court in which the action was tried, upon proof thereof, may make an order for the publication of the notice in some newspaper for a period not exceeding thirty days; such publication is equivalent to personal service.

Appeal by the people, effect of.

SEC. 365.—An appeal taken by the people in no case stays or effects the operation of a judgment in favor of the defendant, until judgment is reversed.

Appeal by defendant, effect of.

SEC. 366.—An appeal to the Supreme Court from a judgment of conviction stays the execution of the judgment, upon filing with the Clerk of the Court in which the conviction was had, a certificate of the Judge of such Court, or of a Justice of the Supreme Court, that in his opinion there is probably cause for the appeal, but not otherwise.

Same.

Duty of officer.

SEC. 367.—If the certificate provided for in the preceding Section is filed, the Sheriff must, if the defendant be in his custody, upon being served with a copy thereof, keep the defendant in his custody without executing the judgment and detain him to abide the judgment on appeal.

Same.

SEC. 368.—If, before the granting of the certificate, the judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate the defendant must be restored, by the officer in whose custody he is, to his original custody.

Duty of Clerks upon appeal.

SEC. 369.—Upon the appeal being taken the Clerk with whom the notice of appeal is filed must, within ten days thereafter, without charge, transmit to the Clerk of the Appellate Court a copy of the notice of appeal, and of the record, and of all bills of exception, instructions and indorsements thereon; and upon the receipt thereof, the Clerk of the Appelate Court must file the same and perform the same service as in civil cases, without charge.

CHAPTER II.

DISMISSING AN APPEAL FOR IRREGULARITY.

Section 370. For what irregularity and how dismissed.
371. Dismissed for want of proper return.

For what irregularity and how dismissed.

SEC. 370.—If the appeal is irregular in any substantial particular, but not otherwise, the Appellate Court may, on any day in the term, on motion of the respondent, upon five days notice, accompanied with copies of the papers upon which the motion is founded, order it to be dismissed.

SEC. 371.—The Court may also, upon like motion, dismiss the appeal, if the return is not made as provided in Section 369, unless for good cause they enlarge the time for that purpose. Dismissed for want of proper return.

CHAPTER III.

ARGUMENT OF THE APPEAL.

Section 372. Appeals, when to be heard and determined.
373. Judgment may be affirmed, but cannot be reversed without argument.
374. Number of counsel to be heard.
375. Defendant need not be present.

SEC. 372.—All appeals in criminal cases must be heard and determined at the first term of the Appellate Court after the record is filed. Appeals, when to be heard and determined.

SEC. 373.—The judgment may be affirmed if the appellant fail to appear, but can be reversed only after argument, though the respondent fail to appear. Judgment may be affirmed, but cannot be reversed without argument.

SEC. 374.—Upon the argument of the appeal, if the offense is punishable with death, two counsel must be heard on each side, if they require it; in any other case the Court may, in its discretion, restrict the argument to one counsel on each side. Number of counsel to be heard.

SEC. 375.—The defendant need not personally appear in the Appellate Court. Defendant need not be present.

CHAPTER IV.

JUDGMENT UPON APPEAL.

Section 376. Court to give judgment without regard to technical errors.
377. What may be reviewed on an appeal by defendant from a judgment.
378. May reverse, affirm or modify the judgment and order a new trial.
379. New trial, where to be had.
380. Reversal of judgment against defendant, proceedings after.

Section 381. Judgment affirmed, to be executed.
382. Judgment of Appellate Court, how entered and remitted.
383. Jurisdiction of Appellate Court ceases after judgment remitted.

Court to give judgment without regard to technical errors.

SEC. 376.—After hearing an appeal, the Court must give judgment, without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties.

What may be required on an appeal by defendant from a judgment.

SEC. 377.—Upon an appeal taken by the defendant from a judgment, the Court may review any intermediate order or ruling involving the merits, or which may have affected the judgment.

May reverse, affirm or modify the judgment and order new trial.

SEC. 378.—The Court may reverse, affirm, or modify the judgment or order appealed from, and may set aside, affirm, or modify any or all the proceedings, subsequent to or dependent upon such judgment or order, and may, if proper, order a new trial.

New trial, where to be had.

SEC. 379.—When a new trial is ordered it must be directed to be had in the Court from which the appeal was taken.

Reversal of judgment against defendant, proceedings after.

SEC. 380.—If a judgment against the defendant is reversed without ordering a new trial, the Appellate Court must, if he is in custody direct him to be discharged therefrom; or if on bail, that his bail be exonerated; or if money was deposited instead of bail, that it be refunded to the defendant.

Judgment affirmed to be executed.

SEC. 381.—If a judgment against the defendant is affirmed, the original judgment must be enforced.

Judgment of Appellate Court how entered and remitted.

SEC. 382.—When the judgment of the Appellate Court is given, it must be entered in the minutes, and a certified copy of the entry forthwith remitted to the Clerk of the Court from which the appeal was taken.

Jurisdiction of Appellate Court ceases after judgment remitted.

SEC. 383.—After the certificate of the judgment has been remitted to the Court below, the Appellate Court has no further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect must be made by the Court to which the certificate is remitted.

TITLE IX.

Miscellaneous Proceedings.

CHAPTER I. *Bail.*
II. *Compelling the attendance of witnesses.*
III. *Examination of witnesses conditionally.*
IV. *Examination of witnesses on commission.*
V. *Inquiry into the insanity of the defendant before trial or after conviction.*
VI. *Compromising certain public offenses by leave of the Court.*
VII. *Dismissal of the action before or after indictment, for want of prosecution, or otherwise.*
VIII. *Proceedings against corporations.*
IX. *Entitling affidavits.*
X. *Errors and mistakes in pleadings and other proceedings.*

CHAPTER I.

BAIL.

ARTICLE I. In what cases defendant may be admitted to bail.
II. Bail upon being held to answer before indictment.
III. Bail upon indictment before conviction.
IV. Bail on appeal.
V. Deposit instead of bail
VI. Surrender of the defendant.
VII. Forfeiture of the undertaking of bail or of the deposit of money.

ARTICLE VIII. Recommitment of the defendant, after having given bail or deposited money instead of bail.
IX. Who may be witnesses in criminal actions.

ARTICLE I.

IN WHAT CASES DEFENDANT MAY BE ADMITTED TO BAIL.

Section 384. Admission to bail defined.
385. Taking of bail defined.
386. Offense not bailable.
387. When defendant may be admitted to bail before conviction.
388. When defendant may be admitted to bail after conviction.
389. Nature of bail.
390. When bail is a matter of discretion, notice of application must be given to Prosecuting Attorney.

Admission to bail defined.

SEC. 384.—Admission to bail is the order of a competent Court or Magistrate that the defendant be discharged from actual custody upon bail.

Taking of bail defined.

SEC. 385.—The taking of bail consists in the acceptance by a competent Court or Magistrate, of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the people of this Territory a specified sum.

Offense not bailable.

SEC. 386.—A defendant charged with an offense punishable with death cannot be admitted to bail, when the proof of his guilt is evident or the presumption thereof great. The finding of an indictment does not add to the strength of the proof or the presumption to be drawn therefrom.

When defendant may be admitted to bail before conviction.

SEC. 387.—If the charge is for any other offense he may be admitted to bail before conviction, as a matter of right.

When defendant may be admitted to bail after conviction.

SEC. 388.—After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail:

1—As a matter of right, when the appeal is from a judgment imposing a fine only;

2—As a matter of discretion in all other cases.

Nature of bail.

SEC. 389.—If the offense is bailable, the defendant may be admitted to bail before conviction:

1—For his appearance before the magistrate on

the examination of the charge before being held to answer;

2—To appear at the Court to which the magistrate is required to return the depositions and statement, upon the defendant being held to answer after examination;

3—After indictment, either before bench warrant is issued for his arrest or upon any order of the Court committing him or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the Court in which it is found or to which it may be transferred for trial;

4—And after conviction and upon an appeal;

5—If the appeal is from a judgment imposing a fine only, or the undertaking of bail, that he will pay the sum, or such part of it as the Appellate Court may direct, if the judgment is affirmed or modified, or the appeal is dismissed;

6—If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

When bail is a matter of discretion, notice of application must be given to Prosecuting Attorney.

SEC. 390.—When the admission to bail is a matter of discretion, the Court or officer to whom the application is made must require reasonable notice thereof to be given to the Prosecuting Attorney.

ARTICLE II.

BAIL UPON BEING HELD TO ANSWER BEFORE INDICTMENT.

Section 391. What Magistrates may admit to bail.
392. Bail how put in. Form of undertaking.
393. Qualifications of bail.
394. Bail, how to justify.
395. On allowance of bail, defendant to be discharged.

What Magistrates may admit to bail.

SEC. 391.—When the defendant has been held to answer upon an examination for a public offense, the admission to bail may be by the Magistrate by whom he is so held, or by any Magistrate who has power to issue the writ of *habeas corpus*.

Bail, how put in.

SEC. 392.—Bail is put in by a written undertaking, executed by two sufficient sureties, (with or

without the defendant, in the discretion of the Magistrate,) and acknowledged before the Court or Magistrate, in substantially the following form:

Form of undertaking.

An order having been made on the——day of ——, A. D. eighteen hundred and——, by A. B., a Justice of the Peace of——County (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been admitted to bail in the sum of ——dollars. We E. F. and G. H. (stating the place of their residence and occupation) hereby undertake that the above named C. D. will appear and answer the charge above mentioned, in whatever Court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the Court, and if convicted, will appear for judgment and render himself in execution thereof, or if he fails to perform either of these conditions, that he will pay to the people of the Territory of Utah, the sum of——dollars (inserting the sum in which the defendant is admitted to bail).

Qualifications of bail.

SEC. 393.—The qualifications for bail are as follows:

1—Each of them must be a resident householder, or freeholder within this Territory; but the Court or Magistrate may refuse to accept any person as bail who is not a resident of the district where bail is offered;

2—They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the Court or Magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

Bail, how to justify.

SEC. 394.—The bail must in all cases justify by affidavit taken before the Magistrate, that they each possess the qualifications provided in the preceding Section. The Magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper.

On allowance of bail, defendant to be discharged.

SEC. 395.—Upon the allowance of bail and execution of the undertaking, the Magistrate must, if the defendant is in custody, make and sign an order

for his discharge, upon the delivery of which to the proper officer, the defendant must be discharged.

ARTICLE III.

BAIL UPON AN INDICTMENT BEFORE CONVICTION.

Section 396. When offense is not capital.
397. When the offense is capital.
398. Bail upon *habeas corpus*, or upon motion.
399. Bail, how put in. Form of undertaking.
400. Sections applicable to qualifications, etc.

When offense is not capital.

SEC. 396.—When the offense charged in the indictment is not punishable with death, the officer serving the bench warrant must, if required, take the defendant before a Magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail.

When offense is capital.

SEC. 397.—If the offense charged in the indictment is punishable with death, the officer arresting the defendant must deliver him into custody, according to the command of the bench warrant.

Bail upon *habeas corpus* or upon motion.

SEC. 398.—When the defendant is so delivered into custody he must be held by the proper officer, unless admitted to bail on examination upon a writ of *habeas corpus*, or upon a motion to the Court in which the action is pending or the Judge thereof, to be admitted to bail.

Bail how put in.

SEC. 399.—The bail must be put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the Court or Magistrate), and acknowledged before the Court or Magistrate, in substantially the following form:

Form of undertaking.

An indictment having been found on the—— day of——, A.D.——, in the District Court, of the ——District, charging A. B. with the crime of—— (designating it generally), and he having been admitted to bail in the sum of——dollars, we, C. D. and E. F., of—— (stating their place of residence and occupation), hereby undertake that the above named A. B. will appear and answer the indict-

ment above mentioned, in whatever Court it may be prosecuted, and will at all times render himself amenable to the orders and process of the Court, and, if convicted, will appear for judgment and render himself in execution thereof, or, if he fails to perform either of these conditions, that we will pay to the people of the Territory of Utah, the sum of——dollars (inserting the sum in which the defendant is held to bail).

Sections applicable to qualifications, etc.

SEC. 400.—The provisions contained in Sections 402, 403 and 404, in relation to bail, apply to the qualifications of the bail, and to all the proceedings respecting the putting in and justifying of bail, and incident thereto.

ARTICLE IV.

BAIL ON APPEAL.

Section 401. Who may admit to bail.
402. Qualifications of bail, how put in and condition of undertaking.

Who may admit to bail.

SEC. 401.—In the cases in which the defendant may be admitted to bail upon an appeal, the order admitting him to bail may be made by any Magistrate having the power to issue a writ of *habeas corpus*.

Qualifications of bail, how put in and condition of undertaking.

SEC. 402.—The bail must possess the qualifications, and must be put in, in all respects as provided in Article 2 of this Chapter, except that the undertaking must be conditioned as prescribed in Section 389, for undertaking of bail on appeal.

ARTICLE V.

DEPOSIT INSTEAD OF BAIL.

Section 403. Deposit, when and how made.
404. May make deposit in lieu of bail, before forfeiture.
405. Deposit to be applied in payment of fine and costs.

Deposit, when and how made.

SEC. 403.—The defendant, at any time after an order admitting him to bail, instead of giving bail

may deposit with the Clerk of the Court in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is, a certificate of the deposit, he must be discharged from custody.

May make deposit in lieu of bail before forfeiture.

SEC. 404 —If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made the bail is exonerated.

Deposit to be applied in payment of fine and costs.

SEC. 405.—When money has been deposited, if it remains on deposit at the time of a judgment for the payment of a fine, the Clerk must, under the direction of the Court, apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant.

ARTICLE VI.

SURRENDER OF THE DEFENDANT.

Section 406. Surrender, by whom; when and how made.
407. By whom, etc., the defendant may be arrested for the purpose of a surrender.
408. On a surrender before forfeiture, money deposited to be refunded, etc.

Surrender, by whom; when and how made.

SEC. 406.—At any time before the forfeiture of their undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1—A certified copy of undertaking of bail must be delivered to the officer, who must detain the defendant in his custody thereon, as upon the commitment, and by a certificate in writing acknowledge the surrender;

2—Upon the undertaking and the certificate of the officer, the Court in which the action or appeal is pending, may, upon notice of five days to the Prosecuting Attorney, with a copy of the undertaking and certificate, order that the bail be exonerated, and on filing the order and the papers used on the application, they are exonerated accordingly.

By whom, etc., the defendant may be arrested for the purpose of a surrender.

SEC. 407.—For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the Territory, may themselves arrest him, or by written authority, indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

On a surrender before forfeiture money deposited to be refunded, etc.

SEC. 408.—If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders himself to the officer to whom the commitment was directed, in the manner provided in the last two Sections, the Court must order a return deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the Prosecuting Attorney, with a copy of the certificate.

ARTICLE VII.

FORFEITURE OF THE UNDERTAKING OF BAIL OR OF THE DEPOSIT OF MONEY.

Section 409. Forfeiture, in what cases and how ordered. When and how discharged.
410. Forfeiture to be enforced by action.
411. Deposit, when forfeited, how disposed of.

Forfeiture, in what cases and how ordered.

SEC. 409.—If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in Court may be lawfully required, or to surrender himself in execution of the judgment, the Court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon declared forfeited. But if at any time before the final adjournment of the Court, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.

When and how discharged.

Forfeiture to be enforced by action.

SEC. 410.—If the forfeiture is not discharged, as provided in the last Section, the Prosecuting Attorney may, at any time after the adjournment of

the Court, proceed by action only against the bail upon their undertaking.

Deposit, when forfeited, how disposed of.

SEC. 411.—If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged, or remitted, the Clerk with whom it is deposited must immediately after the final adjournment of the Court, pay over the money deposited to the Territorial Treasurer.

ARTICLE VIII.

RECOMMITMENT OF THE DEFENDANT, AFTER HAVING GIVEN BAIL OR DEPOSITED MONEY INSTEAD OF BAIL.

Section 412. Recommitment, in what cases to be made.
413. Order, to contain what.
414. Defendant may be arrested in any county.
415. If for failure to appear for judgment defendant must be committed.
416. If for other cause, defendant may be admitted to bail.
417. Bail in such cases, by whom taken.
418. Undertaking, form of.
419. Bail, qualifications of and how put in.

Recommitment, in what cases to be made.

SEC. 412.—The Court to which the committing Magistrate returns the depositions, or in which an indictment or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases:

1—When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof;

2—When it satisfactorily appears to the Court that his bail, or either of them, are dead or insufficient, or have removed from the Territory;

3—Upon an indictment being found in the cases provided in Section 179.

Order, to contain what.

SEC. 413.—The order for the recommitment of the defendant must recite generally the facts upon which it is founded, and direct that the defendant

be arrested by any Sheriff, Constable, Marshal, or Policeman in this Territory, and committed to the officer in whose custody he was at the time he was admitted to bail, to be detained until legally discharged.

Defendant may be arrested in any county.

SEC. 414.—The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any country, [county] in the same manner as upon a warrant of arrest.

If for failure to appear for judgment, defendant must be committed.

SEC. 415.—If the order recites, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

If for other cause, he may be admitted to bail.

SEC. 416.—If the order be made for any other cause, and the offense is bailable, the Court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

Bail in such cases, by whom taken.

SEC. 417.—When the defendant is admitted to bail, the bail may be taken by any Magistrate in the county having authority in a similar case to admit to bail, upon the holding of the defendant to answer before an indictment, or by any other Magistrate designated by the Court.

Undertaking, form of.

SEC. 418.—When bail is taken upon the recommitment of the defendant, the undertaking must be in substantially the following form;

An order having been made on the——day of ——, A.D. eighteen——, by the Court (naming it) that A. B. be admitted to bail in the sum of—— dollars, in an action pending in that Court against him in behalf of the people of the Territory of Utah, upon an information, indictment, or appeal, (as the case may be), we, C. D. and E. F., of (stating the place of residence and occupation),hereby undertake that the above named A. B. will appear in that or any other Court in which his appearance may be lawfully required upon that information, indictment, or appeal, (as the case may be), and will at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof; or if he fails to perform either of these conditions, that we will pay to

the people of the Territory of Utah the sum of—— dollars (insert the sum in which the defendant is admitted to bail).

SEC. 419.—The bail must possess the qualifications, and must be put in, in all respects, in the manner prescribed in Article 2 of this Chapter.

Bail, qualifications and how put in.

ARTICLE IX.

WHO MAY BE WITNESSES IN CRIMINAL ACTIONS.

Section 420. Who are competent witnesses.
421. Husband and wife, when not competent witnesses.
422. Defendant, when not a competent witness. Failure to testify raises no presumptions against him.

SEC. 420.—The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this Act.

Who are competent witnesses

SEC. 421.—Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other, in a criminal action or proceeding to which one or both are parties.

Husband and wife, when not competent witnesses.

SEC. 422.—A defendant in a criminal action or proceeding to which he is a party, is not, without his consent, a competent witness for or against himself. His neglect or refusal to give his consent shall not in any manner prejudice him nor be used against him on the trial or proceeding.

Defendant, when not a competent witness. Failure to testify raises no presumptions against him.

CHAPTER II.

COMPELLING THE ATTENDANCE OF WITNESSES.

Section 423. Subpœna defined, and who may issue.
424. Subpœna, form of.
425. Subpœna, by whom and how served.
426. Witness residing or served with a subpœna out of the district, how compelled to attend.
427. Disobedience to a subpœna, how punished.
428. Witness failing to appear, undertaking forfeited.

Subpœna defined and who may issue.

SEC. 423.—The process by which the attendance of witnesses before a Court or Magistrate is required, is a subpœna; it may be signed and issued by:

1—A Magistrate before whom an information is laid, for witnesses in the Territory, either on behalf of the people or of the defendant;

2—The Prosecuting Attorney, for witnesses in the Territory, in support of the prosecution, or for such other witnesses as the Grand Jury, upon an investigation pending before them, may direct;

3—The Prosecuting Attorney, for witnesses in the Territory in support of an indictment, to appear before the Court in which it is to be tried;

4—The Clerk of the Court in which an indictment is to be tried; and he must, at any time, upon application of the defendant, and without charge, issue as many blank subpœnas, subscribed by him as Clerk, for witnesses in the Territory, as the defendant may require.

Subpœna, form of.

SEC. 424.—A subpœna must be substantially in the following form:

The people of the Territory of Utah to A. B.: You are commanded to appear before C. D., a Justice of the Peace of——Precinct, in——County, (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the Territory of Utah, against E. F. Given under my hand this ——day of——, A. D. eighteen——.

G. H., Justice of the Peace, (or J. K., Prosecuting Attorney, or By order of the Court, L. M., Clerk, or as the case may be).

If books, papers, or documents are required, a direction to the following effect must be contained in the subpœna: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers, or documents required).

Subpœna, by whom and how served.

SEC. 425.—A subpœna may be served by any person, but a peace officer must serve in his county any subpœna delivered to him for service, either on the part of the people or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the original to the witness personally and informing him of its contents.

Witness residing or served with a subpœna outside of district, how compelled to attend.

SEC. 426.—No person is obliged to attend as a witness before a Court or Magistrate out of the district where the witness resides, or is served with the subpœna, unless the Judge of the Court in which the offense is triable, or a Magistrate, upon an affidavit of the Prosecuting Attorney or prosecutor, or of the defendant or his counsel, showing that the evidence of the witness is material, and his attendance at the examination or trial necessary, shall endorse on the subpœna an order for the attendance of the witness.

Disobedience to a subpœna, how punished.

SEC. 427.—Disobedience to a subpœna, or a refusal to be sworn or to testify as a witness, may be punished by the Court or Magistrate as a contempt, unless he can show good cause for his non-attendance.

Witness failing to appear, undertaking forfeited.

SEC. 428.—When a witness has entered into an undertaking to appear, upon his failure to do so, the undertaking is forfeited in the same manner as undertakings of bail.

CHAPTER III.

EXAMINATION OF WITNESSES CONDITIONALLY.

Section 429. Witnesses for defendant may be examined conditionally as provided in this Chapter.
430. In what cases defendant may apply for order.
431. Application, how made.
432. Application, to whom and when made.

Section 433. Order, when granted and what to contain.
434. On proof of service, if Prosecuting Attorney be absent, examination must proceed.
435. If facts on which order was founded be disproved, examination not to proceed.
436. Attendance of witnesses, how enforced.
437. Testimony, how taken and authenticated.
438. Deposition to be sealed up and transmitted to Clerk.
439. When may be read in evidence, subject to objections.

Witnesses for defendant may be examined conditionally as prescribed in this Chapter.

SEC. 429.—When a defendant has been held to answer a charge for a public offense, he may, either before or after an indictment, have witnesses examined conditionally, on his behalf, as prescribed in this Chapter, and not otherwise.

1—The nature of the offense charged;

2—The state of the proceedings in the action;

3—The name and residence of the witness, and that his testimony is material to the defense of the action;

4—That the witness is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

In what cases defendant may apply for the order.

SEC. 430.—When a material witness for the defendant is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

Application, how made.

SEC. 431.—The application must be made upon affidavit, stating:

Application, to whom and when made.

SEC. 432.—The application may be made to the Court during the term thereof, or to the Judge in vacation and must, be upon three days' notice to the Prosecuting Attorney.

Order, when granted and what to contain.

SEC. 433.—If the Court or Judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally, at a specified time and place, and that a copy of the order be served on the Prosecuting Attorney, within a specified time before that fixed for the examination.

On proof of service, if Prosecuting Attorney be absent, examination must proceed.

SEC. 434.—The order must direct that the examination be taken before a Magistrate named therein, and on proof being furnished to such Magistrate of service upon the Prosecuting Attorney of a

copy of the order, if no counsel appear on the part of the people, the examination must proceed.

If facts on which order was founded be disproved, examination not to proceed.

SEC. 435.—If the Prosecuting Attorney, or other counsel, appear on behalf of the people, and it is shown to the satisfaction of the Magistrate, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the Territory, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

Attendance of witnesses, how enforced.

SEC. 436.—The attendance of the witness may be enforced by a subpœna, issued by the Magistrate before whom the examination is to be taken.

Testimony, how taken and authenticated.

SEC. 437.—The testimony given by the witness must be reduced to writing, and authenticated in the same manner as the testimony of a witness taken in support of an information.

Deposition to be sealed up and transmitted to Clerk.

SEC. 438.—The deposition taken must, by the Magistrate, be sealed up and transmitted to the Clerk of the Court in which the action is pending, or may come for trial.

When may be read in evidence

SEC. 439.—The deposition, or a certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the Territory. Upon reading the deposition in evidence, the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in Court.

Subject to objections.

CHAPTER IV.

EXAMINATION OF WITNESSES ON COMMISSION.

Section 440. Witnesses residing out of the Territory when to be examined.
441. When defendant may apply for an order to examine, etc.
442. Commission defined.
443. Application, how made, to contain what.
444. Application, when and to whom made.
445. Order for commission, when granted, and stay of proceedings.
446. Interrogatories, how settled and allowed.
447. Directions as to return of commission.

Section 448. Commission, how executed. Copy of this Section to be annexed to commission.
449. Commission, how returned, when delivered to an agent for that purpose.
450. Same.
451. When and now filed.
452. Commission and return to be open to inspection. Copies, etc.
453. Depositions to be read in evidence. Objections to.

Witnesses residing out of the Territory, when to be examined.

SEC. 440.—When an issue of fact is joined upon an indictment, or before, if the Court so order, the defendant may have any material witness, residing out of the Territory, examined in his behalf, as prescribed in this Chapter, and not otherwise.

When defendant may apply for an order to examine, etc.

SEC. 441.—When a material witness for the defendant resides out of the Territory, the defendant may apply for an order that the witness be examined on a commission.

Commission defined.

SEC. 442.—A commission is a process issued under the seal of the Court and the signature of the Clerk, directed to some person designated as Commissioner, authorizing him to examine the witness upon oath on interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it accordingly to the directions given with the commission.

Application, how made, to contain what.

SEC. 443.—The application must be made upon affidavit, stating:

1—The nature of the offense charged;

2—The state of the proceedings in the action;

3—The name of the witness, and that his testimoney is material to the defense of the action;

4—That the witness resides out of the Territory.

Application, when and to whom made.

SEC. 444.—The application may be made to the Court during the term, or to the Judge in vacation, and must be upon three days' notice to the Prosecuting Attorney.

Order for commission, when granted and stay of proceedings.

SEC. 445.—If the Court or Judge to whom the application is made is satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony; and the Court or Judge may insert in the order a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

Interrogatories, how settled and allowed.

SEC. 446.—When the commission is ordered, the defendant must serve upon the Prosecuting Attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the Court or Judge. The Prosecuting Attorney may, in like manner, serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission with the like notice. In the interrogatories either party may insert any question pertinent to the issue. When the interrogatories and cross-interrogatories are presented to the Court or Judge according to the notice given, the Court or Judge must modify the questions so as to conform them to the rules of evidence, and must indorse upon them his allowance and annex them to the commission.

Directions as to return of commission.

SEC. 447.—Unless the parties otherwise consent, by an indorsement upon the commission, the Court or Judge must indorse thereon a direction as to the manner in which it must be returned, and may in his discretion, direct that it be returned by mail or otherwise, addressed to the Clerk of the Court in which the action is pending, designating his name and the place where his office is kept.

Commission, how executed.

SEC. 448.—The Commissioner, unless otherwise specially directed, may execute the commission as follows:

1—He must publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth and nothing but the truth;

2—He must cause the examination of the witness to be reduced to writing;

3—He must write the answers of the witness as near as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it until in conforms to what he declares is the truth;

4—If the witness declines to answer a question, that fact, with the reason assigned by him for declining, must be stated;

5—If any papers or documents are produced before him and proved by the witness, the same, or copies thereof, must be annexed to the deposition

subscribed by the witness and certified by the Commissioner;

6—The Commissioner must subscribe his name to each sheet of the deposition and annex the deposition, with the papers and documents proved by the witness, to the commission, and must close it up under seal, and address it as directed by the indorsement thereon;

7—If there is a direction on the commission to return it by mail, the Commissioner must immediately deposit it in the nearest post office. If any other direction is made by the written consent of the parties, or by the Court or Judge, on the commission as to its return, he must comply with the direction. A copy of this Section must be annexed to the commission.

Copy of this Section to be annexed to the commission.

Commission, how returned when delivered to an agent for that purpose.

SEC. 449.—If the commission and return is delivered by the Commissioner to an agent, he must deliver the same to the Clerk to whom it is directed, or to the Judge of the Court in which the indictment is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the Commissioner, and that it has not been opened or altered since he received it.

Same.

SEC. 450.—If the agent is dead, or from sickness or other casualty, unable personally to deliver the commission and return, as prescribed in the last Section, it may be received by the Clerk or Judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hands of Commissioner.

When and how filed.

SEC. 451.—The Clerk or Judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the Clerk of the Court in which the indictment is pending. If the commission and return is transmitted by mail, the Clerk to whom it is addressed must receive it from the post office, and open and file it in his office,

where it must remain, unless otherwise directed by the Court or Judge.

Commission and return to be open to inspection. Copies, etc.

SEC. 452.—The commission and return must at all times be open to the inspection of the parties, who must be furnished by the Clerk with copies of the same, or of any part thereof, on payment of his fees.

Depositions to be read in evidence.

SEC. 453.—The depositions taken under the commission may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever; and the same objections may be taken to a question in the interrogatories or to an answer in the deposition, as if the witness had been examined orally in Court.

Objections thereto.

CHAPTER V.

INQUIRY INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

Section 454. An insane person cannot be tried, sentenced or punished for a public offense.
455. Doubt as to sanity of defendant, how determined. Stay of proceedings.
456. Order of trial of the question of insanity. Charge of the Court.
457. Verdict of the Jury and proceedings thereon.
458. If defendant is committed, it exonerates his bail, etc.
459. Defendant detained in an asylum until he becomes sane. Notice then to be given to proper officer.
460. Expenses of sending, etc., defendant to asylum, where chargeable.

An insane person cannot be tried, sentenced or punished for a public offense.

SEC. 454.—A person cannot be tried, adjudged to punishment, or punished for a public offense while he is insane.

Doubt as to sanity of defendant, how determined

SEC. 455.—When an indictment is called for trial, if a doubt arises as to the sanity of the defendant, the Court must order the question to be submitted to a Jury; when such doubt arises, on the defendant being brought up for judgment on conviction, the Court must order a Jury to be summoned from the list of Jurors provided by law, to inquire into the fact; and the trial of the indictment or the pronouncing of the judgment must be

Stay of proceedings.

suspended until the question of insanity is determined by the verdict of the Jury.

Order of trial of the question of insanity.

SEC. 456.—The trial of the question of insanity must proceed in the following order:

1—The counsel for the defendant must open the case and offer evidence in support of the allegation of insanity;

2—The counsel for the people may then open their case and offer evidence in support thereof;

3—The parties may then respectively offer rebutting testimony only, unless the Court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause;

4—When the evidence is concluded, unless the case is submitted to the Jury on either or both sides without argument, the counsel for the people must commence, and the defendant or his counsel may conclude, the argument to the Jury;

5—If the indictment be for an offense punishable with death, two counsel on each side may argue the case to the Jury, in which case they must do so alternately. In other cases the argument may be restricted to one counsel on each side;

Charge of the Court.

6—The Court must then charge the Jury, stating to them all matters of law necessary for their information in giving their verdict.

Verdict of the Jury and proceedings thereon.

SEC. 457.—If the Jury find the defendant sane, the trial of the indictment must proceed, or judgment may be pronounced, as the case may be. If the Jury find the defendant insane, the trial or judgment must be suspended until he becomes sane, and the Court, if it deems his discharge dangerous to the public peace or safety, may order that he be in the meantime committed by the proper officer to a lunatic asylum, and that upon his becoming sane, he be re-delivered to the proper officer.

If defendant is committed, it exonerates his bail, etc.

SEC. 458.—The commitment of the defendant, as mentioned in the last Section, exonerates his bail, or entitles a person, authorized to receive the property of the defendant, to a return of any money he may have deposited instead of bail.

Defendant detained in an asylum until he becomes sane. Notice then to be given to proper officer.

SEC. 459.—If the defendant is received into an asylum, he must be detained there until he becomes sane. When he becomes sane, the person having him in charge must give notice of that fact to the

proper officer, who must thereupon, without delay, bring the defendant from the asylum, and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged.

Expense of sending, etc., defendant to asylum, where chargeable.

SEC. 460.—The expenses of sending the defendant to the asylum, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the offense was committed; but the county may recover them from the estate of the defendant, if he have any, or from a relative legally bound to care for him, or from the county in which he was a resident.

CHAPTER VI.

COMPROMISING CERTAIN PUBLIC OFFENSES BY LEAVE OF THE COURT.

Section 461. Certain offenses for which the party has a civil action may be compromised.
462. Compromise to be by permission of the Court. Order thereon a bar to another prosecution.
463. No public offense to be compromised except as herein provided.

Certain offenses for which the party has a civil action may be compromised.

SEC. 461.—When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next Section, except when it is committed:

1—By or upon an officer of justice, while in the execution of the duties of his office;

2—Riotously;

3—With an intent to commit a felony.

Compromise to be by permission of the Court

SEC. 462.—If the party injured appears before the Court to which the depositions are required to be returned, at any time before trial, and acknowledges that he has received satisfaction for the injury, the Court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on

Order thereon a bar to another prosecution.

the minutes. The order is a bar to another prosecution for the same offense.

No public offense to be compromised except as herein provided.

SEC. 463.—No public offense can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise be stayed, except as provided in this Chapter.

CHAPTER VII.

DISMISSAL OF THE ACTION BEFORE OR AFTER INDICTMENT, FOR WANT OF PROSECUTION OR OTHERWISE.

Section 464. When action may be dismissed.
465. Action may be continued and defendant discharged from custody, when and how.
466. If action dismissed, defendant to be discharged, etc.
467. Court may, on its own motion, or on application of the Prosecuting Attorney, order action dismissed.
468. *Nolle prosequi* abolished.
469. Dismissal a bar in misdemeanor but not in felony.

When action may be dismissmissed.

SEC. 464.—The Court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

1—When a person has been held to answer for a public offense, if an indictment is not found against him at the next term of the Court at which he is held to answer;

2—If a defendant, whose trial has not been postponed upon his application, is not brought to trial at the next term of the Court in which the indictment is triable, after it is found.

Action may be continued and defendant discharged from custody, when and how.

SEC. 465.—If the defendant is not indicted or tried, as provided in the last Section, and sufficient reason therefor is shown, the Court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

If action dismissed, defendant to be discharged, etc.

SEC. 466.—If the Court directs the action to be dismissed, the defendant must, if in custody be discharged therefrom; or if admitted to bail, his bail

is exonerated or money deposited instead of bail must be refunded to him.

Court may on its own motion or on application of Prosecuting Attorney order action dismissed.

SEC. 467.—The Court may, either of its own motion or upon the application of the Prosecuting Attorney, and in furtherance of justice, order an action or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

Nolle prosequi abolished.

SEC. 468.—The entry of a *nolle prosequi* is abolished, and no Prosecuting Attorney can discontinue or abandon a prosecution for a public offense, except as provided in the last Section.

Dismissal a bar in misdemeanor but not in felony

SEC. 469.—An order for the dismissal of the action, as provided in this Chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor; but it is not a bar if the offense is a felony.

CHAPTER VIII.

PROCEEDINGS AGAINST CORPORATIONS.

Section 470. Summons upon information, etc., against; by whom issued and when returnable.
471. Summons, form of.
472. When and how served.
473. Examination of the charge.
474. Certificate of the Magistrate and return thereof with the depositions.
475. If Magistrate certify that there is sufficient cause, Grand Jury to investigate, etc.
476. Appearance and plea.
477. Fine on conviction, how collected.

Summons upon information, etc., against; by whom issued, and when returnable.

SEC. 470.—Upon an information or complaint against a corporation, the Magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

Summons, form of.

SEC. 471.—The summons must be substantially in the following form:

County of (as the case may be). The people of

the Territory of Utah to the (naming the corporation).

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the information of A. B., for (designating the offense generally). Dated at——this——day of——eighteen ——. G. H., Justice of the Peace (or as the case may be).

When and how served.

SEC. 472.—The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the President or other head of the corporation, or to the Secretary, Cashier or Managing Agent thereof.

Examination of the charge.

SEC. 473.—At the appointed time in the summons, the Magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

Certificate of the Magistrate, and return thereof with the depositions.

SEC. 474.—After hearing the proofs, the Magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the deposition and certificate, as prescribed in Section 116.

If Magistrate certify that there is sufficient cause Grand Jury to investigate, etc.

SEC. 475.—If the Magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the Grand Jury may proceed thereon as in case of a natural person held to answer.

Appearance and plea.

SEC. 476.—If an indictment is found, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

Fine on conviction, how collected.

SEC. 447.—When a fine is imposed upon a corporation, on conviction, it may be collected by virtue of the order imposing it, by the proper officer, out of its real and personal property, in the same manner as upon an execution in a civil action.

CHAPTER IX.

ENTITLING AFFIDAVITS.

Section 478. Affidavits defectively entitled valid.

SEC. 478.—It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, or appeal in which it is made.

Affidavits defectively entitled valid.

CHAPTER X.

ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS.

Section 479. Errors and mistakes, when not material.
480. Acts and parts of acts inconsistent with this Act repealed.
481. This Act takes effect March 10, 1878.

SEC. 479.—Neither a deposition from the form or mode prescribed by this Act in respect to any pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant or tended to his prejudice, in respect to a substantial right.

Errors and mistakes when not material.

SEC. 480.—"An Act providing for appeals to the Supreme Court," approved January 18th, 1861, and "An Act regulating the mode of procedure in criminal cases," approved January 21st, 1853, and that all acts and parts of acts inconsistent with the provisions of this Act be, and the same are, hereby repealed.

Inconsistent Acts and parts of Acts repealed.

SEC. 481.—This Act shall be in force from and after the tenth day of March, eighteen hundred and seventy-eight.

This Act takes effect March 10, 1878.

Approved February 22, 1878.

SPECIAL LAWS.

AN ACT to change the Surname of persons herein named.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That the surname of William F., William F. junior, George C., Martin C., Joseph E., Henry E., Samuel E., Franklin Y., Heber E., Margaret C., Lavinia C., Martha E., Elizabeth Y., Francis Y., and Emma E. Littlewood, is hereby changed to Rigby; *Provided*, that nothing in this Act shall release any of the persons herein named from responsibilities in law, or in equity, heretofore incurred, nor deprive them, or any one of them, of any rights, privileges or powers, in law or in equity, which they would have by retaining their former name.

Approved February 18, 1878,

AN ACT to change the name of Ephraim Powell to Ephraim Brettel Bolton.

SEC. 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*—That the name of Ephraim Powell, of Piute County, be changed to Ephraim Brettel Bolton, and that any and all legal rights and obligations existing in the name of Ephraim Powell are hereby continued to Ephraim Brettel Bolton.

Approved February 20, 1878.

JOINT MEMORIALS.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

GENTLEMEN:—

Your memorialists, the Governor and Legislative Assembly of the Territory of Utah, would most respectfully represent to your honorable body that, during the years 1865-66 and 67 there was a vexatious Indian war in this Territory; and during that time six flourishing settlements in Piute and Sevier Counties, four settlements on the borders of Sanpete County, and fifteen settlements in Iron, Kane and Washington Counties, were entirely abandoned.

A large portion of the stock from these and other Counties was driven off, and more than fifty persons, men, women and children, were killed by the Indians.

Under the direction of the Governor and Superintendent of Indian Affairs a large number of citizen militia were called into service from all parts of the Territory, many of whom served during the three years and supplied themselves with horses and other equipments.

In January, 1869, a full report of the expenses incurred by the people in suppressing these Indian hostilities, was forwarded to your honorable body with the following indorsement of Governor Durkee attached thereto:

EXECUTIVE OFFICE, U. T.,
Salt Lake City, Jan. 9th, 1869.

I, Charles Durkee, Governor of Utah Territory, do hereby certify that the military service rendered by the militia of this Territory, comprised in the foregoing accounts, was absolutely necessary, and was therefore sanctioned and authorized by me at the times specified, and that the accounts are just.

CHARLES DURKEE, Governor.

On March 22nd, 1869, the report was received by your Honorable Body, "referred to the Committee on Military Affairs, and ordered printed with accompanying papers." The report was printed and no further action has been taken thereon. The published report, with approved vouchers, shows that one million one hundred and twenty-one thousand and thirty-seven and thirty-eight one hundredths ($1,121,037 38) dollars is justly due to the people of this Territory.

Your memorialists therefore respectfully ask your Honorable Body to appropriate that amount to reimburse the Territory and compensate the citizens for their services rendered, and transportation and supplies furnished in suppressing the Indian hostilities during the three years named, and your memoralists, as in duty bound, will ever pray.

I know nothing of the facts and circumstances as set forth in this memorial of the Legislative Assembly, consequently have no recommendation to make, but respectfully refer it to Congress for such action as may be just and proper in the premises.

[s] GEO. W. EMERY,
Governor of the Territory of Utah.

February 22d, 1878.

To the Honorable Senate and House of Representatives of the Congress of the United States:

GENTLEMEN—

Your memorialists, the Governor and Legislative Assembly of the Territory of Utah, hereby respectfully represent:

That there are large tracts of land in the regions of the Rocky Mountains which are useless for cultivation until, by the construction of expensive canals and ditches, water is conducted upon them for the purpose of irrigation: That settlers upon such lands, who endeavor to comply with the provisions of the Homestead Act, are frequently compelled to cease their residence thereupon in consequence of the lack of water for domestic purposes; or the brackish and unwholesome nature of the water there obtained from wells, until, by the construction of canals for irrigation, water is brought through such and suitable for general use:

That upon the near completion of a canal passing through such land, persons who have neither resided upon it nor assisted in the construction of said canal, but who have watched for such an opportunity, enter upon the land, and by pre-emption, or otherwise, obtain possession, to the great injury of the settler who was unable to reside upon the land:

That the labor on and cost of construction of such canals or ditches, is often more than equivalent to the value of such residence on land as will meet the requirements of the Homestead law, and that the general benefits to the country accruing from the building of such canals are far in excess of those arising from such residence:

Therefore, your memorialists respectfully ask your honorable body to extend, by appropriate legislation, the benefits of the provisions of the Homestead and other land laws to the *bona fide* builders of irrigating canals and ditches, in such a manner that so much means or labor expended on such canals may be counted equivalent to a given time of residence on the land; proof of such expenditure to be given before the Land Register by certificate of the irrigation company engaged in the construction of such canal, by the testimony of witnesses as required in relation to residence, or such other means as your honorable body may require.

Such legislation would secure many honest working people in their rights, encourage the construction of irrigating canals, and the settlement upon and redemption of much land now considered waste, and meet conditions that the Desert Land Act does not reach and to which said Act does not apply.

The early attention of your honorable body to this important matter is earnestly requested, and as in duty bound your memorialists will ever pray.

February 22, 1878.

To the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Governor and the Legislative Assembly of the Territory of Utah, beg respectfully to set forth that the rapid growth of the Territory of Utah in settlement, wealth and population, requires a greater amount of legislative labor than can possibly be accomplished in the time

now allowed by law, and your memorialists therefore respectfully ask your honorable body to increase the number of days' session of the Legislative Assembly allowed by law to sixty days instead of forty days, as heretofore.

I concur with the members of the Legislature in the above Memorial.

[s] GEO. W. EMERY,
Governor of the Territory of Utah.

February 22, 1878.

JOINT RESOLUTIONS.

Resolved by the Governor and Legislative Assembly of the Territory of Utah:—That the Auditor of Public Accounts is hereby authorized to rent the room on first floor of east end of Deseret Bank building for an office of the Auditor of Public Accounts, Territorial Treasurer, Recorder of Marks and Brands, and for the Territorial Library; *provided*, the rent does not exceed six hundred dollars a year.

Approved February 18th, 1878.

CONCURRENT RESOLUTION.

Be it resolved : (the Council concurring,) That the action of the Committee on Compilation in placing two hundred copies of the Compiled Laws of Utah in the hands of the Secretary of the Territory for distribution to the President of the United States, Members of his Cabinet, Heads of Bureaus, various Committees of the Senate and House of Representatives, and for the use of State and Territorial Libraries, is hereby approved, and said Committee are hereby authorized and directed to place another one hundred copies of said Compiled Laws of Utah in the hands of the Secretary for further distribution abroad, in accordance with the suggestion of the Governor in his late message to this Assembly; *provided*, that out of the above number one copy be distributed to each of the United States Commissioners in this Territory.

February 20th, 1878.

Instructing the Commissioners to Locate University Lands to solicit instructions from the Secretary of the Interior regarding the disposal of University lands in the Territory of Utah.

Be it resolved by the Governor and Legislative Assembly of the Territory of Utah:—That, whereas by an Act of Congress, approved January 21st, 1855, two townships or 46,080 acres of land was reserved for the establishment of a University; said lands to be located under restricted legal subdivisions, and disposed of under the direction of the Territorial Legislature, and,

Whereas by the same Act full power and authority was given to the Secretary of the Interior to issue all needful rules and regulations for fully carrying into effect the several provisions of said Act.

Now, therefore, the Commissioners to Locate University Lands are hereby authorized and instructed to correspond with the Secretary of the Interior, soliciting from him the issuance of such rules, regulations and instructions as he may deem necessary to effect under the direction of the next session of the Territorial Legislature the disposal of the whole or any part of said lands for the purpose named in said Act of Congress, and report accordingly to the Legislature the first week of its session in January, 1880.

Approved February 22d, 1878.

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